TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 122.

JOHNSTON ARMSTRONG, ANCILLARY RECEIVER FOR THE NEW SOUTH BUILDING AND LOAN ASSOCIATION OF NEW ORLEANS, LOUISIANA, APPELLANT,

vs.

JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKINRIDGE, HENRY F. BEARDSLEY AND JOSEPH R. BEARDSLEY, AND EMMA B. JENKINS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 2, 1905.

(19,916.)

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In the Court of Appeals of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, &c., Appellant,
vs.
JAMES A. ASHLEY ET AL. } No. 1313

a Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant,
vs.
JAMES A. ASHLEY, MARY A. BRECKINridge, Henry F. Beardsley, Mary M. Ashley, Widow of Nehemiah B. Ashley, Deceased; Hyden H. Ashley, Ralph B. Ashley, and Emma B. Jenkins, Heirs at Law of Nehemiah B. Ashley, and Joseph R. Beardsley, Sole Heir at Law of Sarah E. Beardsley, Deceased. } No. 22257. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill, &c.*

Filed May 3, 1901.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant,
vs.
JAMES A. ASHLEY, MARY A. BRECKINRIDGE, Henry F. Beardsley, Mary M. Ashley, Widow of Nehemiah B. Ashley, Deceased; Hyden H. Ashley, Ralph B. Ashley, and Emma B. Jenkins, Heirs at Law of Nehemiah B. Ashley, and Joseph R. Beardsley, Sole Heir at Law of Sarah E. Beardsley, Deceased, Defendants. } Equity. No. 22257, Docket 50.

1. The complainant respectfully represents that he is a citizen of the United States and of the city of New Orleans, in the State of

Louisiana, that heretofore by an order passed in this court in equity cause No. 22213 he was on the seventeenth day of April 1901 appointed ancilliary receiver of the New South Building and Loan Association of New Orleans, Louisiana, for the District of Columbia, pursuant to an order, a certified copy of which, marked "Exhibit A" is hereto attached and prayed to be taken as a part hereof, and was empowered forthwith to take possession of the assets of said association, of every kind, wherever found and to sue for the same as directed by the court and that having duly qualified as such ancillary receiver and before the filing hereof being further thereto especially authorized by an order passed in said cause, now brings this
2 suit for the purposes in said order and herein set forth and as appears by a copy of said order, marked "Exhibit B" duly certified and hereto attached and prayed to be taken as a part hereof.

2. That the defendants are all citizens of the United States and of lawful age; that James A. Ashley is a resident of the city of Washington and the District of Columbia; that Mary A. Breckinridge is a resident of the city of Brooklyn, in the State of New York; that Henry F. Beardsley, and Joseph R. Beardsley, are residents of Montrose, in the State of Pennsylvania, that Emma B. Jenkins, Mary M., Hyden H., and Ralph B. Ashley are residents of —— Pennsylvania; that all of said defendants are of lawful age and sued in their own right, Henry F. Beardsley being the husband and Joseph R. Beardsley the sole heir at law of Sarah E. Beardsley, deceased, and Henry F. Beardsley claims tenancy by the courtesy that said Sarah E. Beardsley died intestate leaving said Joseph R. Beardsley her sole heir at law and discovery is prayed as to his exact age and as to the date of the death of his said mother; Mary M. Ashley is the widow, and Hyden H. and Ralph B. Ashley and Emma B. Jenkins are the heirs at law of Nehemiah B. Ashley, deceased, who departed this life on or about the — day of —— 189–.

3. That heretofore namely on the twenty-eighth of October 1893 Aaron Bradshaw and Mary E. Bradshaw, his wife, both of the District of Columbia, and parties defendant hereto, executed and delivered a deed of trust, duly recorded among the land records of the District of Columbia, on the 30th day of October, A. D. 1893 in — Liber 1860 folio 324 *et seq.*, a certified copy of which, marked
3 "Exhibit C" is hereto attached and prayed to be taken as a part hereof, to John Hanson Kennard and Johnston Armstrong both of New Orleans, Louisiana, trustees, to secure the full and punctual performance of the condition of a certain bond of even date, the said bond being in the penal sum of forty thousand dollars ($40,000.) duly executed and delivered by the said Bradshaw to said association, a copy of which bond, marked "Exhibit D" is hereto attached and prayed to be taken as a part hereof.

4. The said land and premises conveyed by said deed of trust for the purpose of securing performance of said bond were namely, lots forty eight (48) forty-nine (49) fifty (50) fifty-one (51) fifty-two (52) fifty-three (53) of John H. Walter's subdivision of lots in square nine

hundred and thirty-nine (939) as per plat recorded in Liber 19, folio 47, of the records of the office of the surveyor of the District of Columbia, and being six lots with a frontage each of sixteen (16) feet, fronting ninety-six (96) feet on Ninth street east, and extending back a distance of one hundred and sixteen (116) feet more or less, the south-west corner of the whole tract containing and constituted by said lots being at a point on Ninth street about ninety feet and four inches north of the southwest corner of said square and the said tract, lots and premises being the same land referred to in the ejectment suits, referred to herein and wherein certain of the defendants hereto are plaintiffs.

5. That the said sum of twenty thousand dollars ($20,000.) was duly paid over and advanced by or in behalf of said association,
4 to the said Bradshaw in five instalments, to-wit: (1) one instalment about November 29, 1893, four thousand dollars ($4,000.); (2) one instalment December 23, 1893, three thousand dollars ($3,000.); (3) one instalment about January 22, 1894, four thousand dollars ($4,000); (4) one instalment about February 21, 1894, two thousand dollars ($2,000); (5) one instalment April 12, 1894, seven thousand dollars ($7,000); said instalments being all paid according to the usual plan of payment of building associations, as the buildings which were then being erected on the premises aforesaid, by the said Bradshaw, progressed and which said buildings were completed and erected with the funds of the said association as aforesaid, on the tract or lots aforesaid, and all of said fund was set apart by said association for said Bradshaw.

6. That after making certain payments according to the tenor of the said trust and bond thereby sought to be secured and amounting to $1746.67, arrears for stock payments being exacted before each said instalment was advanced, the said Bradshaw, about May 7, 1894, defaulted in further payment and the said land and premises became subject and liable to be sold according to tenor of said trust; that subsequent to the default of the said Bradshaw, aforesaid, the said association became insolvent and on the application of a shareholder therein on the third day of June, 1899, a receiver was appointed by order of the circuit court of the United States for the eastern district of Louisiana, for said District.

7. That at the date of the execution of said deed of trust
5 and bond there were pending in the supreme court of the District of Columbia certain suits, known as cases at law No. 32,182 the said defendant Mary A. Breckinridge and said Aaron Bradshaw being respectively plaintiff and defendant therein, alleging a one fifth interest in said plaintiff to said realty, also suit at law No. 32039 in which James A. Ashley defendant hereto was plaintiff and said Aaron Bradshaw, defendant, alleging a two-fifths interest in said plaintiff to said realty, and that a similar suit at law in said court *as* afterwards brought about December 1895 known as No. 39040 alleging a one fifth interest in said realty in said defendant hereto, Henry F. Beardsley, as plaintiff and against the said Bradshaw defendant, in all of which said suits as ejectment suits the said

plaintiffs therein, defendants hereto, undertook to and did assert a claim to the title and possession of four-fifths of said realty, the land hereinbefore described and purporting to be conveyed by said trust for the security of said bond and advance, and that in all of said suits at law, namely, Nos. 32,182, 32,039 and 32,040 a trial has been had and a verdict rendered in favor of the plaintiffs for possession without mesne profits on or about the 23rd day of April, A. D. 1901 and that, as this petitioner is informed and believes and now avers, judgment in favor of the said plaintiffs will soon be rendered thereon, and the said defendant thereto, the said Aaron Bradshaw made no further or other defense than that made heretofore by him in suit at law No. 32,181 heretofore tried in the said supreme court of the District of Columbia and hereinafter referred to.

6 8. That another suit similar to the said suit at law No. 32,182, namely, suit at law No. 32,181 was, October 13, 1891 filed as aforesaid and prosecuted by the plaintiff therein, Nehemiah B. Ashely, now deceased, husband of Mary M. Ashley and father of Hyden H. Ashley, Ralph B. Ashley and Emma B. Jenkins, defendants herein, against the said Aaron Bradshaw and whereby possession was sought in ejectment of one-fifth of the premises sought to be conveyed by said deed of trust; that a trial was had of said suit and a verdict and judgment given in favor of said Ashley in the supreme court of the District of Columbia, which was on appeal confirmed by the Court of Appeals of the District of Columbia and, coming to the Supreme Court of the United States by writ of error in behalf of said Bradshaw, was there decided in favor of said Ashley; that none of the said defendants have as yet entered into possession of the premises aforesaid, nor made any disposition of the title apparently thus confirmed in them to the same.

9. That the said association had no notice of the pendency of any of said ejectment suits at the time it made said advances as aforesaid and took said trust as aforesaid, purporting to secure the same, making said advance and taking said trust in good faith and without notice and in manner following; that about the spring of 1893, a sufficient number of shares in said association having been subscribed there, the local share-holders formed in the city of Washington an organization known as the local board of said association; that said local board, so called,

7 while associated in name with the said association and designed to promote the sale of shares or interests in the said association, had no authority to bind the said association but that the advantage of borrowing from the said association was confined to borrowers who should be endorsed by the said local board; that the said association had at various times, agents in the District of Columbia for the actual purpose of selling its shares, V. Brevard having represented the association in that capacity in the said District; that it had agents for the purpose of valuing property upon which loans were proposed to be made, Joseph A. Sprigg and George E. Vedetto having acted in such capacity for said association in the District of Columbia, and so acted in

respect to the loan to said Bradshaw; that the formation of local boards was authorized by the by-laws of said association and the members of the same were required to be shareholders in the said association and that local boards were usually formed when from three hundred to five hundred shares were subscribed in any locality; that the members of each local board elected their own officers and the said association had and exercised no supervision or control over the persons so elected or the acts of the local board in selecting them; that it was customary for the local board to pass on applications for loans made by its members and forward same to this association, thus restricting as aforesaid loans to share-holders and members of said board; that these share-holders were owners *pro tanto* of the said association and electors of the local board which represented said local share-holders in dealing with the said association but were not ag nts of the said association; that the said
8 local board passed favorably upon the application of the said Bradshaw for the said loan of twenty thousand dollars, but that the valuation of the said property was otherwise examined for the said association by its agents thereto authorized; that it was the rule of said association to place upon the borrowers the expense of examining titles to property upon which loans were to be secured, and the attorney who had been elected by the local share-holders was required to examine and report upon any title involved, and the abstract or certificate of title so presented was usually accepted by the association if no defect appeared on the face thereof; that out of over two thousand and one hundred loans made by said association, placing over one million of dollars, the instance herein set forth is the only one where an incorrect abstract was presented, and with fraudulent purpose, to the said association; that the said share-holders in the District of Columbia elected one John H. Walter and one William E. Aughinbaugh, both of said city, as its president and attorney respectively, and that the said Bradshaw paid said Aughinbaugh to examine the title to the property conveyed by the said trust being the same concerned in said ejectment suits and that the certificate of the said Aughinbaugh was accepted by the said association, said certificate showing a fee simple title in the said Aaron Bradshaw to the property aforesaid, without making any reference whatever to the ejectment suits then pending as aforesaid, which omission was, your deponent avers and verily believes, fraudulently and intentionally made by the said William E. Aughinbaugh in collusion with the said Walter and the said Bradshaw for the purpose of inducing said association to make said ad-
9 vance or loan and the said Aughinbaugh and the said Bradshaw concealed from the said association the fact that the latter paid the former the unusual sum of $250. in consideration of his services in the premises, which said amount so paid is averred to have been more than eight times the usual charge made by any reputable title insurance company in the District of Columbia for a similar certificate and the payment of which sum is averred upon information and belief.

10. The said John H. Walter was not at that time the apparent record owner of the said property so conveyed in trust and through the use of which the said money was secured from the said association, nor was he the said record owner at the date of the application for the said loan; that the next day after the date of recording a conveyance thereof from said Walter to Mary E. Bradshaw, wife of said Bradshaw, to-wit, on September 13, 1892, she, the said Mary E. Bradshaw, executed and there was recorded a deed purporting to convey said property to one Lydia Hoagland, a person to your complainant then and now unknown, who, on the date of this record, to-wit, September 15, 1892, conveyed the property to Leta M. Morse, who is now known to have been a stenographer or clerk in the office of said John H. Walter, which said conveyance remained unrecorded, presumably in the possession or under the control of the said Walter until the 30th day of October, 1893, when the same was filed for record, together with the conveyance dated October 28, 1893, from the said Leta M. Morse, unto defendant Aaron Bradshaw.

11. That immediately, thereafter the erection of six certain two story, six-room, modern, brick and stone dwelling houses,
10 respectively numbered 215 to 225 9th street, N. E., in said city of Washington, both inclusive, were begun and in due course of time were completed at a cost to said association of twenty thousand ($20,000) dollars, the expense of the erection thereof being paid by said association in accordance with the well known building association plan, as the buildings severally progressed and pursuant to said trust and bond and all while the fact of the pendency of said suits at law was being concealed from the said association by the said Bradshaw, Aughinbaugh and Walter as aforesaid;

12. And your complainant is informed and believes that the said Bradshaw is hopelessly insolvent and that the said Aughinbaugh has some time since disappeared from the District of Columbia; that the said Walter, Bradshaw and Aughinbaugh were, at the time of the transaction hereinbefore set out, in good standing and of good repute to the best of the information and belief of the complainant, and that the said Walter especially was regarded as a man of high standing and responsibility.

13. That the said advances made from time to time, as the buildings on said real estate progressed and became finally completed, extended over a period of about seven months, to-wit, from the date of said loan until April 12, 1894, when the final payment of seven thousand ($7000) dollars was made; that as your complainant is informed and believes and so avers, the erection of said buildings by and with the money of said association and each stage in the progress thereof was within the personal knowledge of defendant James A. Ashley representing himself as well as said Ne-
11 hemiah B. Ashley, and defendants Mary E. Breckinridge Henry F. Beardsley or Sarah E. Beardsley, deceased, his wife; and, well knowing as did Nehemiah B. Ashley and each of said defendants named in this paragraph of the bill, that said association would not have made such advances had it been cognizant

of the condition of the title or the suits pending with respect thereto, as then known to said defendants and as concealed from said association by said Aaron Bradshaw, John H. Walter and William E. Aughinbaugh as aforesaid at the time of the granting of said application for said loan, during the whole period involved in the making of said payments and the completion of said buildings, forming, as they did, a conspicuous and substantial and valuable improvement to said land; that no notice whatever from said Nehemiah B. Ashley or defendants James A. Ashley, Mary E. Breckinridge, Henry F. Beardsley or Sarah E. Beardsley, his wife, or any of the defendants, was given to said association, notwithstanding their information from the public record of the contents of the deed of trust aforesaid, the domicile and officers of said association, and notwithstanding further the well known plan of payment of such loans or advances by all building associations, including said association during, and never wholly, until completion of buildings being erected as aforesaid.

14. That at the time and prior to the making of the said advance and the execution of said trust, the said association made diligent inquiry as to the condition of the title to the said real estate upon which said advances were as aforesaid secured or sought to be secured, and was informed by the said Aaron Bradshaw among
12 others, in his application duly sworn to before a notary public, that he had acquired the premises aforesaid as part owner in January, 1892, and that the title was then, at the date of the application, July 25, 1893, in him and that he paid $9930 cash for the property, that J. A. Butler, Jr., and Stanley Simons appraised the same under oath at the time as worth $10,000 exclusive of any improvements; and said association was informed through the said W. E. Aughinbaugh, in a written certificate of title dated May 26, 1893, that he had examined the title to the lots upon which said trust was to be secured as aforesaid, and reported said title "good according to the record, in Lydia Hoagland, subject to the deed of trust below noted," which said deed of trust was noted by him as purporting to have been made September 14, 1892, recorded September 15, 1892, to secure Mary E. Bradshaw $10,176, purchase money, which said trust appears to have been heretofore released; that the said association had no reason to distrust at that time the fidelity of the said W. E. Aughinbaugh, but was led to believe that he was an attorney in good standing and a member of the bar of the supreme court of the District of Columbia; that the said association was further provided by the said Walter with a chain of title from the Real Estate Title Insurance Company of the District of Columbia through to June 2, 1893, and which said chain purported to show a continuous and apparently complete record title of the property upon which the said loan was sought to be secured, but did not purport to show any actions or suits at law or otherwise concerning the same.

13 15. That the said defendants had record notice that the said association was located in the city of New Orleans, in the

State of Louisiana the same being set forth in the trust recorded as aforesaid, and knew that said loan and advance would not and could not have been made in behalf of said association save through the fraud and deceit of some party interested in securing the said loan, and that the said defendants should in good conscience and equity have given some notice to the association at its home office of the state of the said title or the claim or claims in respect thereto of the said defendants, but that nevertheless they, the said defendants, stood by and permitted the said expenditure to be deliberately and slowly made as aforesaid to the great loss and injury of the said association and the petitioner avers were, and are, estopped and can not now deny that this petitioner, in behalf of the said association, has an equitable lien in behalf of the said association on the land and premises hereinbefore described to the extent of the present value of the said improvements placed thereon as aforesaid.

16. That the value of the said improvements when made were more than twice as great, in the neighborhood of $20,000 as the value of the land upon which the said improvements were placed as aforesaid and that so great an expenditure under the circumstances of the defendant's pending suits was notice to any fair-minded person, having knowledge of such suits and the claim they represented, that the expenditure was of necessity being made as a result of fraud or deceit, and threw a burden in equity and good conscience
14 on the claimants Nehemiah B. Ashley and the defendants hereto, who knew, as the petitioner avers, on information and belief, that such expenditure was being made and from whom the notice conveyed by the recording of said trust was not by fraud or deceit kept back, to address some remonstrance or warning to the said association, so obviously, slowly and extensively spending money on the improvements aforesaid, or else to be estopped in equity from taking the benefit of such expenditure without just compensation.

17. That when the defendants stood by and permitted such improvements to be made and progress as aforesaid under such unusual circumstances, they took the chance of such improvements having been brought about by fraud and deceit and are now estopped in equity and good conscience to assert their legal title without compensation for such improvements.

18. That the silence of the defendants in the face of the great expenditures aforesaid was misleading and calculated to aid and abet the fraud and deceit being practiced upon said association, and calculated further to bring about the expenditure on and improvement of the land which the defendants then claimed to own and did own as aforesaid.

19. And this petitioner further avers that irrespective of the said estoppel as aforesaid and irrespective of the said Nehemiah B. Ashley and the defendants having stood by with knowledge as aforesaid and permitted said improvements to be made, that, having investigated the said title with diligence and having entered upon the said transaction and loan in good faith and under the be-

lief that the title therein for the security of the said loan was
15 a good title and having no notice of any defect in the said title and being without knowledge of the adverse claim of the said Nehemiah B. Ashley and the defendants, and without notice from them or any of them of any right or claim whatever thereto, which said acts and conditions and absence of notice by reason of said fraud and deceit, is now averred by this petitioner, and petitioner has a right, in behalf of said association, to have an equitable lien declared upon the said premises for the protection and remuneration of the said association to the extent of the present value of the said improvements placed thereon as aforesaid.

Wherefore complainant prays:

1. That this complainant may be declared to have an equitable lien upon the premises hereinbefore described to the extent of the present value of the improvements thereon.

2. That for the purpose of discharging said lien, if not otherwise paid, a trustee may be appointed, with power to sell the premises hereinbefore described and pay to this complainant his just proportionate share of the proceeds of sale.

3. That the complainant may have such other and further relief as he is entitled to in the premises.

4. To which end complainant prays that subpœnas may
16 issue requiring the defendants to appear and answer the exigencies of this cause.

JOHNSTON ARMSTRONG, *Receiver.*

The defendants hereto are:
James A. Ashley, Wash'n D. C.
Mary A. Breckinridge, Brooklyn, N. Y.
Henry F. Beardsley, Montrose, Penna. and Mary M. Ashley, Hyden H. Ashley, Ralph B. Ashley, Emma B. Jenkins, Joseph R. Beardsley.

I do solemnly swear that I read over the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

Sworn to and subscribed before me, this 1st. day of May, 1901.

[SEAL.] FRANK H. MORTIMER,
United States Commissioner.

GEORGE H. LAMAR,
BLAIR LEE,
Solicitors of Complainant.

17 EXHIBIT A.

Filed May 3, 1901.

In the Supreme Court of the District of Columbia.

FELICIANA R. MILES, Complainant,
vs.
NEW SOUTH BUILDING AND LOAN ASSOCIATION of New Orleans, Defendant. } Equity. No. 22213.

The application of the complainant under the original ancillary bill in this cause for the appointment of receiver for the properties and effects of the respondent in this District, and within the *the* jurisdiction of this court, coming on to be heard and the parties having appeared by their solicitors, and the court having considered the same, and it appearing to the court that the complainant herein has already filed in the circuit court of the United States for the eastern district of Louisiana, the court having jurisdiction of the New South Building and Loan Association of New Orleans, Louisiana, a corporation having its corporate status and its principal office in the city of New Orleans in the State of Louisiana, a bill of complaint against said New South Building and Loan Association of New Orleans, Louisiana, a copy of which bill is exhibited with the bill of complaint filed in this court.

And it further appearing that in said cause now pending in the said circuit court of the United States for the eastern district of Louisiana, the Honorable Don A. Pardee, United States circuit

18 judge, presiding in said circuit court on the 3rd day of June, A. D. 1899, made his order and decree sustaining complainant's application for a receiver and naming and appointing Johnston Armstrong as receiver of the property of the said New South Building and Loan Association of New Orleans, Louisiana, conferring upon said receiver certain powers and directions as fully appears in said order, a certified copy of which is attached to the complainant's ancillary bill filed herein.

And it further appearing by the terms of said order that said receiver was authorized and empowered to take possession of the assets of said association of every kind and description wherever the same may be found and to sue for the same as directed by said court, and that it is necessary that ancillary receiverships should be had to carry out the objects and purposes of said original bill, as filed in aid of the court of primary jurisdiction.

And it further appearing that the said Johnston Armstrong has duly qualified as such receiver having executed and filed the bond in the manner required by and according to the terms of said order and decree,

Now the court being fully advised and being moved thereto by the solicitors of the complainant, it is this 18th day of April, A. D.

1901, adjudged, ordered and decreed that this court take ancillary jurisdiction with the circuit court of the United States for the eastern district of Louisiana in said cause now pending in said court wherein the complainant herein is complainant and the said New South
19 Building and Loan Association of New Orleans, Louisiana, is defendant.

It is further adjudged, ordered and decreed that the said order made by the said circuit court of the United States for the eastern district of Louisiana, of date, June 3rd, 1899, sustaining the application of the complainant for a receiver and naming and appointing said Johnston Armstrong receiver of the property of said New South Building and Loan Association of New Orleans, Louisiana, with certain powers and under certain instructions be, and the same hereby is, ratified, approved and confirmed and the said Johnston Armstrong is hereby appointed receiver as prayed, and is vested with the same powers, rights and privileges as are conferred by said order of said circuit court of the United States for the eastern district of Louisiana, in so far as there is any property or any assets of the respondent corporation in this District, and within the jurisdiction of this court; and the said receiver having already executed bond in the manner prescribed by the order and decree of said circuit court of the United States for the eastern district of Louisiana, aforesaid, he is hereby authorized to take possession of all the property, assets, and rights of property and within the jurisdiction of this court and to act as such receiver forthwith.

It is further adjudged, ordered and decreed that the said receiver is hereby authorized and directed to sue for, collect in, recover and otherwise pursue such course in and about the performance of this trust aforesaid as may be necessary and requisite to protect
20 the interests of said corporation in said District of Columbia, it is further ordered that the clerk enter on the minutes of the court, a copy of the said order of the said circuit court of the United States for the eastern district of Louisiana of date June 3rd, 1899, immediately following entry of this order and decree.

A. C. BRADLEY, *Justice.*

True copy.
Test:
[SEAL.] J. R. YOUNG, *Clerk,*
By J. WILMER LATIMER, *Ass't Clerk.*

21 Filed May 3, 1901.

EXHIBIT B.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

FELICIANA MILES, Complainant,
vs.
THE NEW SOUTH BUILDING AND LOAN ASSOCIATION of New Orleans, Louisiana, a Corporation Created and Organized under the Laws of the State of Louisiana, Defendant. } Equity. No. 22213.

On motion of Blair Lee, solicitor for the ancillary receiver herein, it is by the court ordered this 3rd day of May that leave be, and it hereby is, granted to the said receiver to institute proceedings against James A. Ashley and others for the purpose of enforcing an equitable lien against certain property and as set forth in the petition of the said receiver, verified by his affidavit in the city of New Orleans and State of Louisiana on the first day of May, A. D. 1901, and the same being exhibited to this court at the granting of this motion.

A. B. HAGNER,
Asso. Justice.

A true copy.
Test: J. R. YOUNG, *Clerk*,
By J. WILMER LATIMER, *Ass't Clerk.*

22 EXHIBIT C.

Filed May 3, 1901.

Liber 1860, folio 324. S. E. S.

Aaron Bradshaw *et ux.*
to
Kennard and Armstrong, Tr's. } Deed trust. Recorded Oct. 30th, '93, 12.42 p. m.

This indenture, made this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and ninety-three, between Aaron Bradshaw and Mary E. Bradshaw, his wife, both of the District of Columbia, parties of the first part and John Harrison Kennard of New Orleans, Louisiana and Johnston Armstrong of New Orleans, Louisiana, trustees, parties of the second part. Witnesseth, that the said parties of the first part for and in consideration of ten dollars, current money of the United States, to them in hand paid by the said parties of the second part, the receipt of which, before the sealing and delivery of these presents is hereby acknowl-

edged, have granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto and to the use of the said parties of the second part their heirs and assigns as joint tenants *of* the following described lands and premises, situate and being in the city of Washington in the District of Columbia, and known and distinguished as lots forty-eight (48) forty nine (49) fifty (50) fifty-one (51 fifty two (52) and fifty three (53) of John H. Walter's subdivision of lots in square nine hundred and thirty nine (939) as per plat recorded in Liber 19 folio 47, of records of the office of
23 the surveyor of the District of Columbia, being embraced in original lots 2, 3, and 20, according to said plat the said lots adjoin each other and measure each sixteen (16) feet front on Ninth street east and run back east towards 10th. to an alley, lots 48, 49 and 50 measure each 105.89 feet in depth, lot 51 measure- 105.89 feet, on the side adjoining lot 50. thence 12 feet north, thence 10 feet west, thence 4 feet north, thence 95.89 feet west to Ninth street lot 52 measures 95.89 feet in depth, and lot 53 measures 115.89 feet in depth, together with the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, To have and to hold the said land and premises with the appurtenances and hereditaments to the same belonging unto and to the use of the said parties of the second part their heirs and assigns, as joint tenants. In and upon the trusts nevertheless hereinafter expressed and specified and none other, that is to say,

First. To receive the full and punctual performance of the condition of a certain bond of even date with these presents, in the penal sum of forty thousand ($40.000/00) dollars, duly executed and delivered by the said Aaron Bradshaw to the New South Building and Loan Association of New Orleans, La. a corporation created by the laws of Louisiana and having its home or principal office at said New Orleans, which condition is in substance that the said Aaron Bradshaw by reason of his having purchased and received from said association an advance on two hundred shares of stock therein held by him amounting to the sum of twenty thousand ($20,000/00) dollars, at a premium of fifty cents per share per month, *showed* on or before the last Saturday of each and every month occurring
24 after date of said bond, pay or cause to be paid to said association at its home office until the maturity of said shares of stock on the books of said association as provided by its by laws, rules and regulations, the sum of one hundred and forty dollars monthly, as aforesaid, being instalments due on said shares of stock, on which said advance was made, and further, the sum of one hundred dollars monthly as aforesaid, as interest, on said advance, and further, the sum of one hundred dollars monthly as aforesaid, as premium thereon, together with all fines and forfeitures imposed, and all taxes and insurance and expenses with interest thereon, paid or expended in consequence of said advance as provided in said bond,

Second. And on full performance of the conditions of said bond

to release and reconvey to said Aaron Bradshaw heirs or assigns at his cost the said above described land and premises,

Third. Upon default or failure for a period of two months in the performance in whole or in part of the conditions of said bond or in payment and discharge of any cost, charge, expense, taxes or insurance with interest thereon, arising, incurred or expended in and about the protection or execution of this trust, the said bond shall be deemed forfeited and the whole amount thereof become due and said trustees at the request in writing of the aforesaid association or its assigns, shall sell above described land and premises at public auction to the highest bidder therefor, they or he first giving
25 public notice of such sale, by advertisement in some newspapers at least ten days previous to the day of sale, and the time, place and terms of sale, are hereby left to the discretion of said trustees; and upon the full compliance by the purchaser, with the terms and conditions of the said sale, the said trustees and the survivor of them, their, and his heirs and assigns are hereby authorized and empowered to execute and deliver to such purchaser a good and sufficient deed in fee simple for the said ground and premises with the appurtenances, free from liability for the application of the purchase money, and upon this further trust to dispose of the proceeds; arising from such sale in manner following, to wit: A. To the payment of all taxes due and unpaid upon said property, B. To the costs of executing this trust, including a commission to said trustees of five per centum upon the gross amount of such sale, C, to the payment of the whole amount of the indebtedness of the said Aaron Bradshaw to the said association together with any sum or sums paid for insurance, taxes, or assessments or fees, costs, and expenses of litigation as aforesaid with interest as aforesaid, In case of voluntary payment by consent of parties or default under this deed before the said stock shall have reached the par value of $100 per share, the amount of said bond will be subject to a credit equal to the withdrawal value of the said two hundred shares of stock on which the said loan is made, such value to be determined by the board of directors of said association according to the rules of valuation adopted by the by laws or by resolution of the board of directors, and as of the date of such payment or sale, and thereupon the said stock shall be surrendered to said association, D, the residue
26 if any to pay over to the said Aaron Bradshaw of the first part his heirs and assigns, And said parties of the first part Aaron Bradshaw and Mary E. Bradshaw hereby covenant with the said parties hereto of the second part their heirs and assigns or substituted trustee to forever warrant and defend the title to said granted premises unto the said parties hereto of the second part, their heirs and assigns or substituted trustee for the uses and purposes hereinbefore declared from and against all persons claiming the same or any part thereof, by, through, or under the said parties hereto of the first part, and at the cost of the person requesting the same to execute and deliver any other or further deed or deeds, deemed by legal counsel necessary to more fully assure the title to said granted prem-

ises unto the said parties hereto of the third part, *part*, their heirs and assigns, for the uses aforesaid.

In testimony whereof the said parties of the first part hereunto set their hands and seals the day and year above written.

AARON BRADSHAW. [SEAL.]
MARY E. BRADSHAW. [SEAL.]

Signed, sealed and delivered in the presence of—
LETA M. MORSE, *Witness.*

CITY OF WASHINGTON, *District of Columbia,* } *To wit:*

I, Leta M. Morse a notary public in and for said District, hereby certify that Aaron Bradshaw and Mary E. Bradshaw, his wife, who are personally well known to me as the persons who executed the aforesaid and annexed deed dated twenty-eighth October,
27 A. D. 1893, personally appeared before me in the District aforesaid and acknowledged said deed to be their act and deed, and the said Mary E. Bradshaw, being by me examined privily and apart from her husband, and having the aforesaid deed, fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this 28th. day of October, A. D. 1893.

LETA M. MORSE,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *April* 16, 1901.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1860, fol. 324 *et seq.*, one of the land-records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds. [SEAL.]

(I. R. stamp.)

28 EXHIBIT D.

Bond.

Know all men by these presents, that I, Aaron Bradshaw of the District of Columbia, *are* held and firmly bound unto the New South Building and Loan Association, a corporation created by the laws of Louisiana, and having its home or principal office at New Orleans, Louisiana, and its assigns in the just and full sum of forty thousand dollars, for the payment of which I bind myself, my heirs executors and administrators firmly by these presents.

Sealed with my seal, and dated the 28th day of October, A. D. 1893.

The condition of the above obligation is such, that whereas, I, the said Aaron Bradshaw have this day procured an advance of twenty thousand dollars, on two hundred shares of stock, which I hold in said association, from said, The New-South Building and Loan Association, under the by-laws, rules and regulations thereof, at a premium of fifty cents per $100 per month. Now, should I, the said Aaron Bradshaw or any one for me, well and truly pay to the said association, at its home office in New Orleans, Louisiana, until the maturity of my said shares of stock on the books of said association, as provided in its by-laws, rules and regulations, the sum of one hundred and forty dollars, monthly on the last Saturday of each month, being installments due on said stock, on which an advance was procured, as aforesaid, and the further sum of one hundred dollars, monthly aforesaid, on the same day as in-
29 terest and one hundred dollars per month as premium on said advance, and keep the buildings on the property conveyed to secure said advance insured, in a good and solvent insurance company, to be designated by the said association, to the amount of twenty thousand dollars, for the benefit of said association, and pay all taxes and assessments against the same at maturity thereof, and also pay all fines which may be duly charged against me by said association, and comply with all and singular the requirements of said by-laws, rules and regulations, then this obligation to be void; otherwise of full effect.

AARON BRADSHAW. [L. S.]

Signed, sealed and delivered in the presence of—

WALTER H. ACKER.
JOHN H. WALTER.

30 *Marshal's Return Noted on Summons.*

Summoned defendant No. 1—personally, May 6, 1901, Nos. 2, 3, & 4. not to be found June 4, 1901.

AULICK PALMER,
U. S. Marshal.

L.

Joint Answer of Defendants.

Filed February 3, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant, *versus* JAMES A. ASHLEY ET AL., Defendants. } No. 22257, Eq. Doc. 50.

The defendants James A. Ashley, Mary A. Breckinridge, Henry F. Beardsley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley and Emma B. Jenkins, for answer to the original and amended bill of complaint in the above entitled cause, answering, say:

1. They are willing to admit for the purposes of this suit, that the complainant is ancillary receiver of the New South Building and Loan Association of New Orleans, Louisiana, for the District of Columbia, as alleged.

2. The defendant James A. Ashley, is a resident of the city of Washington, in the District of Columbia. The defendants Mary A. Breckinridge, Emma B. Jenkins, Mary M. Ashley, Hayden H.
31 Ashley and Ralph B. Ashley are residents of Scranton, in the State of Pennsylvania, and the defendant Henry F. Beardsley is a resident of Montrose, in the State of Pennsylvania. There is no such person as Mary M. Hayden known to these defendants. The said Henry F. Beardsley is the surviving husband of Sarah E. Beardsley, deceased, and a tenant by the courtesy as to the real estate described in the bill. The defendant Mary M. Ashley is the widow, and the defendants Hayden H. Ashley, Ralph B. Ashley and Emma B. Jenkins are the children and only heirs at law of Nehemiah B. Ashley, deceased, as alleged.

3–6. They believe it to be true that one Aaron Bradshaw and Mary E. Bradshaw, his wife, executed a deed of trust purporting to convey certain parts of square 939, in the city of Washington, described in said deed of trust as lots 48 to 53, inclusive, of John H. Walter's subdivision of lots in said square, to the complainant and John Hanson Kennard, as trustees, to secure a certain bond as is alleged in the third paragraph of the bill; but they deny that the said Aaron Bradshaw and his wife had any valid title to said ground, or that there were any such sub-lots in said square. These defendants have no knowledge concerning the advances alleged to have been made to the said Bradshaw under the said deed of trust as alleged, nor of the default thereunder set forth in the bill, nor of the insolvency of the New South Building and Loan Association of New Orleans as alleged.

7–8. These defendants further admit that, at the time of the execution of the said deed of trust by the said Bradshaw and
32 wife to Kennard and Armstrong, there were then pending the several suits at law in ejectment mentioned in the

seventh and eighth paragraphs of the bill, brought against the said Bradshaw to recover possession, in fee simple of lots 1, 2, 3, and 20 in said square 939, the said lots being otherwise sometimes known as lots, 3, 4, 5 and 6 of said square, which said ejectment suits had been for a long time, to wit, for the space of several years, pending in this court, and matters of public record, prior to the said deed of trust to Armstrong and Kennard, and the alleged advances made thereunder. The said ejectment suits have since been finally determined in favor of these defendants, who are now and for some time past have been in actual occupation and enjoyment of the property, under the judgments recovered by them in the said actions. The said suits grew out of the following facts, namely:

The John H. Walter mentioned in the bill had, for a number of years, been engaged in the business of securing deeds from the heirs, or from persons purporting to be the heirs of persons long since dead and who once had or claimed to have, title to real estate in the District of Columbia, and of thereupon taking possession of property which happened to be vacant, or clouding the title to property of which possession could not be obtained by him and his associates, and offering quit-claim deeds to the occupants or owners of such property. Pursuant to this business so undertaken by him, the said Walter, about the year 1889, obtained deeds from persons claiming to be the heirs of one George Walker, conveying two entire squares and a very large number of original lots in other squares in the city of Washington, under a contract by said
33 Walter, for himself and his associates, and at their expense, to endeavor to assert claims to all the property in question, and to divide the proceeds of such operations with the said alleged heirs of George Walker, the property described in the bill being among that covered by the deed from them to him above mentioned. The said George Walker had been a speculative investor in Washington real estate at the time of the foundation of the city, but had abandoned his purchases, and the country, returning to Great Britain, of which he was a citizen, and neither he nor any one claiming under him having paid any taxes or attempted to exercise any acts of ownership over his holdings for a long space of time, to wit for more than three-fourths of a century before the entry of said Walter upon his said enterprise.

In accordance with his said scheme or plan of operations, the said Walter made a pretended subdivision of the said lots, and conveyed the same to the said Bradshaw, or to his wife, and said Bradshaw took violent, forcible possession thereof, the said property being then vacant and unimproved, by erecting upon the said property, at the south west corner of said square, a small brick edifice, built in two days, and protected while in course of construction by a number of colored men, armed with sticks and stones, employed by the said Bradshaw for that purpose, the remainder of the said property being contemporaneously enclosed by a fence, whereupon the defendants James A. Ashley, Mary A. Breckinridge, Henry F. Beardsley and Nehemiah B. Ashley, then the owners of the

said property, were compelled to resort to the said ejectment
34 suits to recover possession of the same. Pending these suits, and as a means of still further fortifying themselves in the possession of the property, the said Walter, or the said Bradshaw, or both of them, proceeded to erect thereon the improvements described in the bill, obtaining for the purpose, and upon the security of the deed of trust to Kennard and Armstrong above referred to, certain advances from the said New South Building and Loan Association, as these defendants were informed subsequently to the completion of the said houses, but not prior thereto. As before set forth, the said deed of trust was executed, and the said advances made, long subsequently to the institution of the said ejectment suits, and when they were at issue awaiting trial, and of which suits, therefore, as the defendants are advised and believe, and therefore aver, the said building association and all other persons were bound to take notice. And, in addition to the pendency of the said suits, these defendants further aver that any examination of the land records would have disclosed the fact that the title of George Walker had been made the subject of tax deeds for very many years prior to the said deed of trust, that the said lots had come down through a regular chain of conveyances, extending through nearly or quite three-fourths of a century, to the defendants and those under whom they claim, and that the taxes had been paid on the said lots by the defendants and their predecessors in title during all the said extended period. In addition, the business in which the said Walter was engaged, and the character of the titles which he held, were matter of great notoriety in the District
35 of Columbia, and the facts and circumstances of the forcible possession taken of the property in controversy in this suit, were also, well known in the community, and the said several facts and circumstances, as the defendants are advised and believe, and therefore aver, were abundantly sufficient to put the said building association and all other persons upon notice of the character of the title possessed by the said Bradshaw at the time the said deed of trust was executed.

9–12. These defendants have no knowledge of the relations between the said building association and the various persons named in the bill, nor, as they are advised and believe, and therefore aver, are they chargeable with any notice of or concern with its said relations or any of its transactions in the said paragraph set forth. If it be true, as alleged, that the said building association was made the victim of frauds practiced upon it by its president and attorney for the District of Columbia, and by the said Bradshaw, which, however, these defendants can neither admit nor deny, but call for strict proof if material, it is neither alleged nor claimed in and by the bill that these defendants, or any of them, were cognizant of the said frauds, nor in any manner connected therewith, and they aver, affirmatively, that they had no knowledge whatsoever of the said frauds, and were wholly free from any participation therein or connection therewith, of any kind or character whatsoever. They

had at that time no knowledge of the standing or repute of William E. Aughinbaugh but aver that John H. Walter and Aaron Bradshaw were principally, if not wholly, known in the District of
36 Columbia as persons engaged in the character of operations above set forth, and aver that, if the said building association in making its loan investigated or relied upon the standing and repute of the said Walter and Bradshaw, then it was especially chargeable with notice of the character of their title to the property described in the bill.

13. These defendants, and each of them, deny, as wholly without the color of foundation in truth or fact, the allegation of the thirteenth paragraph of the bill that the advances of the building association toward the erection of the buildings referred to in the bill were within the personal knowledge of any of them, or that of the late Nehemiah B. Ashley. On the contrary, these defendants and the said Nehemiah B. Ashley were wholly ignorant of the sources from which the money to erect the said buildings was procured. Learning that one Childs was engaged in the work of constructing the same, they gave him notice on January 4th, 1894, which was very shortly after they had learned of his connection with the buildings, that he would be held liable as a trespasser upon the defendants' said premises, and that the erection of the said structures was not with their authority, a copy of which notice, which was served personally upon the said Childs, is herewith filed, marked "Exhibit A," and prayed to be read as part of this answer. It was not until in or about the month of February, 1895, that the defendants, or any of them, learned of the advances made by the building association, or of the deed of trust held by it, their said knowledge coming to them through the employment by said building association of Messrs. Walter H. Acker and William J. Miller as its attor-
37 neys in the said pending ejectment suits, and through overtures from said attorneys for some compromise or adjustment, the said negotiations culminating in a proposition made by and on behalf of the said defendants to the said attorneys last named, on or about the 31st day of May, 1895, offering to sell to the building association the lots upon which the said houses stand at their then market value, a copy of which proposition is hereto annexed, marked "Exhibit B," and prayed to be read as part hereof.

Instead of accepting the very fair and reasonable proposition so tendered by and on behalf of the defendants, the said building association thereafter continued to employ in aid of the defense to the said ejectment suits Messrs. Acker and Miller, and further retained for the same purpose William F. Mattingly, Esquire, and united its efforts with those of the said Bradshaw and Walter to defeat these defendants of their just rights in the premises, protracting the said litigation until the month of April, 1901, carrying it to the Supreme Court of the United States, upon a bond furnished, as the defendants are informed and believe, and therefore aver, by the said building association, continuing to supply counsel in aid of the efforts of the said Bradshaw and Walter until the judgment and

opinion of the Supreme Court of the United States rendered further efforts impracticable, the said opinion being reported in 180 U. S., at p. 59, and subjecting these defendants to an amount of costs and expenses in said litigation, including tax arrearages and penalties to an enormous amount, and to losses in the depreciation in market value pending the said litigation, in the aggregate materially exceeding the present actual value of the improvements, as
38 these defendants are advised and believe, and therefore aver.

These defendant are advised and believe, and therefore aver, that it was no part of their business to guard the interests of the building association by investigating its transactions in the District of Columbia, and by ascertaining its relations with Walter, Aughinbaugh, Bradshaw and others, and to inform it of the frauds which it alleges were practiced upon it by the several persons named, even if they had been aware of the fact, which they deny, that the said houses were being constructed with moneys furnished by said building association, and they claim the same benefit of this objection as if they had demurred to the bill.

14. These defendarts deny that the said association "made diligent inquiry as to the condition of the title to the said real estate" upon which its said advances were made, if it be true, as is also alleged in the bill, that it made its advances in ignorance of the claims of these defendants, and of the pendency of their suits. They have no knowledge of the representations alleged to have been made to the said association by the said Bradshaw, or by J. A. Butler, Jr., or Stanley Simons or W. E. Aughinbaugh; and, as they are advised and believe, and therefore aver, they have no concern with any of the said representations or transactions. They deny that they had "record notice," or any other notice, of the location of the said building association in New Orleans, or of its existence, anywhere; and they deny that they had any knowledge of said association's alleged loans or advances, and still less of the alleged fact that said alleged loans and advances were procured through the frauds
39 and deceit of its own officers, agents and representatives.

They further deny, as wholly without warrant, the allegation of the bill that these defendants are estopped to deny the claim of said association that it has an equitable lien, or any lien, upon the property of these defendants because of its said loans or advancements, under the facts stated.

The defendants are wholly unable to concede the proposition of law set up by the bill of complaint, to the effect that they, the defendants, were bound to take notice of an encumbrance placed upon their property by persons having no title thereto, at a time when defendants neither had occasion to consult the land records nor in fact did so, and yet that the said association, although advancing money upon the security of the defendants' said lots, and although consulting the records and causing the title to said lots to be examined, is not bound by the notice which the records afforded, but is exempt from such notice. The defendants are advised and believe, and therefore aver, that the other allegations of law in the

bill contained—as, for example, that the alleged disproportion between the value of the improvements and the value of the land created notice that the expenditure in constructing the said buildings was the result of fraud or deceit, or threw any burden in equity and good conscience upon the defendants to act as guardian for the building association in the premises, as alleged; or that the silence of the defendants, who, as aforesaid, were entirely without information as to the sources from which said Bradshaw or the said Walter were deriving the moneys with which to complete the said houses, created any
40 equity as against them or subjected them to any obligations to the association: or that any such investigation as was made by the association of the title to the property, when its true condition was a matter of public record and unmistakably discoverable by any proper examination, entitled it to any lien upon the property of these defendants, or any right as against them. The defendants claim the same benefit of these several objections, and of each of them, as if they had demurred to the bill.

These defendants have no knowledge of the amount of money actually expended upon the erection of the said buildings, and they claim strict proof thereof, if material; as, also, that the said buildings or improvements are now worth the sum of $20,000, or any sum approximating that amount.

And, having fully answered, they pray that they may be hence dismissed with their reasonable costs.

MARY M. ASHLEY. JAMES A. ASHLEY.
HAYDEN H. ASHLEY. HENRY F. BEARDSLEY.
RALPH B. ASHLEY. MARY A. BRECKINRIDGE.
EMMA B. JENKINS.

A. S. WORTHINGTON,
J. J. DARLINGTON,
Sol'rs for Defendants.

41 DISTRICT OF COLUMBIA, *ss:*

I, James A. Ashley, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, that the allegations therein contained as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

JAMES A. ASHLEY.

Subscribed and sworn to before me this 20th day of January, A. D. 1902.

A. L. HOUGH,
Notary Public, D. C.

[SEAL.]

STATE OF PENNSYLVANIA, }
County of Lackawanna, } *ss:*

We, Mary A. Breckinridge, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley and Emma B. Jenkins, on oath say that we have

read the foregoing answer by us subscribed and know the contents thereof, that the allegations therein contained as of personal knowledge are true, and that those set forth upon information and belief we believe to be true.

MARY A. BRECKINRIDGE.
MARY M. ASHLEY.
HAYDEN H. ASHLEY.
RALPH B. ASHLEY.
EMMA B. JENKINS.

Subscribed and sworn to before me this 29th day of January A. D. 1902.

[SEAL.] B. G. MORGAN,
Notary Public.

My com. expires Jan'y 31, 1902.

42 STATE OF PENNSYLVANIA, } ss:
County of Susquehanna, }

I, Henry F. Beardsley, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, that the allegations therein contained as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

HENRY F. BEARDSLEY.

Subscribed and sworn to before me this 27th day of January, A. D. 1902.

[SEAL.] B. B. BUFFUM,
Clerk Orphans' Court.

43 EXHIBIT "A."

JAN'Y 4", 1894.

Mr. Childs, Washington, D. C.

SIR: You are represented to us as contractor and builder of certain houses for which ground has been broken and excavated or which are in course of erection upon lots Nos. 5 & 6 in square No. 939, in this city (alleged to have been sub-divided into lots No. 48 to 53 in said square), fronting on Ninth street east between B & C streets north. You are hereby notified that if such is the fact, and you or your agents or employees shall enter upon said lots or ground, you will be held liable for trespassing thereon as well as for any and all trespasses thereon by you or them at any time prior to the date of this notice. We are the owners of these lots and have not given you or any one else the right or permission to enter thereon for the erection of houses or for any purpose whatever.

You are hereby also notified that the proposed improvements on

said property are not with our authority, and that we will not be responsible for any liabilities contracted by Mr. Bradshaw.

Very respectfully,

JAMES A. ASHLEY,
NEHEMIAH B. ASHLEY,
By JAMES A. ASHLEY, *Att'y-in-fact.*
MARY A. BRECKINRIDGE,
By JAMES A. ASHLEY, *Att'y-in-fact.*
JOSEPH R. BEARDSEY,
By his next friend, JAMES A. ASHLEY.

44 EXHIBIT "B."

MONTROSE, SUSQ'A CO., PA., *May 31st*, 1895.

Messrs. Acker & Miller, representing "The New South B. & L. Ass'n," of New Orleans.

GENTLEMEN: Some time since, Mr. Miller invited me to his office, at which time he requested that the Ashley heirs name a sum, or price for their interest in the six lots in sq. 939, upon which the B. & L. Ass'n hold a trust deed, given by one Bradshaw. You are well aware of the fact that these six lots comprise a part of a plat of ground in said sq. claimed by the Ashley heirs, whose title to, and possession of, is being assailed by one J. H. Walter and the above named Bradshaw; and you also know that the matter is now awaiting adjudication in the courts of the District, by suits at law, brought some years before this loan was made to Bradshaw. I learned from Mr. Acker, shortly after, that no delegated authority to act, had been given by the ass'n, and I did not further consider the idea of an offer at that time. At my last interview with Mr. A., the 1st of May, he informed me he expected the att'y of the ass'n from N. O., to be here about the 10th and he would notify me of his arrival.

I remained in the city several weeks, but heard nothing, and business compelled me to leave W. for home.

We have no desire, especially in the present depressed condition of real estate (which we believe to be temporary), to sell any of our property in sq. 939; but under the peculiar circumstances of
45 the case, after consulting my associates, I am authorized to make the following offer:—

We will sell to the "New South B. & L. Ass'n" the six lots upon which the houses stand at their present market value, or price;—said value not to exceed the price at which similar lots (unimproved) in the same, or contiguous squares are offered for sale.

Upon the payment of said price, or sum, we will convey our title to them by deed or quit claim, or make a building agreement to so convey upon the determination of the pending suits, or a deed *in escrow*, as counsel shall advise.

We will hold this offer open until the 1st of July, next.

Yours truly, H. F. BEARDSLEY.

W. H. Acker, Wm. J. Miller, Washington, D. C.

46 *Answer of Joseph R. Beardsley.*

Filed February 26, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Receiver,
versus
JAMES A. ASHLEY ET AL. } No. 22257. Equity.

The defendant Joseph R. Beardsley, for answer to the bill of complaint in the above entitled cause, answering says:

He admits that Sarah E. Beardsley, one of the heirs at law of the late Joseph R. Ashley, is now deceased, she having died on the 28th day of November, A. D. 1890, intestate, and leaving her surviving this defendant, her son and only heir at law.

This defendant believes that the answers of his co-defendants, James A. Ashley and others, to the original and amended bills in this cause, correctly set out the several matters and things therein stated, and he adopts the same as his answer. This defendant has never been a resident of the District of Columbia, and, being a mere reversioner as to the property in controversy, after the termination of the life estate of his father, the defendant Henry F. Beardsley, he has never, at any time, had any agent in respect to the said property, nor any earlier or better knowledge of the alleged advances of the New South Building and Loan Association of New Orleans than was possessed by his co-defendants as shown by their said answer.

47 And, having fully answered, this defendant prays that he may be hence dismissed, with his reasonable costs.

JOS. B. BEARDSLEY.

J. J. DARLINGTON,
Sol'r for Joseph R. Beardsley.

COUNTY OF SUSQUEHANNA, }
State of Pennsylvania, } *ss:*

I, Joseph R. Beardsley, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, that the allegations therein contained as of my own personal knowledge are true, and that those set forth upon information and belief, I believe to be true.

JOS. R. BEARDSLEY.

Subscribed and sworn to before me this 24th day of February, A. D. 1902.

[SEAL.]

B. B. BUFFUM,
Clerk Orphans' Court.

48 *Replication to Joint Answer.*

Filed February 28, 1902.

In the Supreme Court of the District of Columbia, This 28th Day of February, 1902.

JOHNSTON ARMSTRONG, Receiver, Plaintiff,
vs.
JAMES A. ASHLEY ET AL., Defendants. } Equity. No. 22257.

The complainant hereby joins issue with the defendants, James A. Ashley, Mary A. Breckinridge, Henry F. Beardsley, Mary M. Ashley, Hayden H. Ashley and Ralph B. Ashley, Emma B. Jenkins.

GEORGE H. LAMAR,
BLAIR LEE,
Solicitors for Plaintiff.

The motion to dismiss for want of replication is hereby withdrawn.

J. J. DARLINGTON,
Sol'r for Def't.

49 *Replication, &c.*

Filed March 10, 1902.

In the Supreme Court of the District of Columbia, This 10th Day of March, 1902.

JOHNSTON ARMSTRONG, Receiver, Plaintiff,
vs.
JAMES H. ASHLEY ET AL., Defendants. } Equity. No. 22257.

The complainant hereby joins issue with the defendant, James H. Ashley.

GEORGE H. LAMAR.
BLAIR LEE.

Replication, &c.

Filed April 14, 1902.

In the Supreme Court of the District of Columbia, This 14th Day of March, 1902.

JOHNSTON ARMSTRONG, Receiver, Plaintiff,
vs.
JAMES A. ASHLEY ET AL., Defendants. } Equity. No. 22257.

The complainant hereby joins issue with the defendant, Joseph R. Beardsley.

BLAIR LEE,
Solicitor for the Complainant.

50 *Motion for Leave to Amend Bill.*

Filed May 27, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant,
vs.
JAMES A. ASHLEY ET AL., Defendants. } Equity. No. 22257, Docket 50.

Now comes the plaintiff, by Blair Lee and George H. Lamar, his solicitors, and moves the court for leave to amend the original bill herein, by inserting after paragraph 14 and before paragraph 15, the following:

"14 A. That in addition to the abstract and certificate of title, as signed by said W. E. Aughinbaugh under date of May 26, 1893, as aforesaid, there was a continuation of title made by the District Title Insurance Company from the 1st day of June to the 23rd day of September 1893; and a further examination and continuation of title was made by Walter H. Acker, an attorney of the District of Columbia and successor to the said W. E. Aughinbaugh as attorney for said local board in which said Acker made a personal examination of the records from the 26th day of May to and including the 1st day of November 1893; that in making said examination said Acker had occasion to and did carefully examine all entries as to lots in square 939 then found in the two volumes purporting to contain a complete index to all pending ejectment suits as said volumes were then kept by the clerk of the supreme court of the Dis-
51 trict of Columbia and universally used by those examining or making continuations of title; that, as originally filed, none of the aforesaid ejectment suits pending at the date of said deed

of trust affected any part of the land involved herein; that when the same were so amended as to include said land, the plaintiffs therein, well knowing the fact that said Bradshaw was capable of practicing the very character of fraud perpetrated in this instance and that, in making continuations of title any lawyer would rely on said general index for reference to any pending ejectment suits, utterly failed and neglected to advise and have the clerk of said court make the necessary entries on said general index of ejectment suits so that when said indexes were examined by said Acker and said District Title Insurance Company said general indexes failed to show or indicate pendency of any such suit or suits as those which, by amendment as aforesaid, had been made to apply thereto within the knowledge and at the instance of these defendants or those through whom they severally claim; but for which failure and neglect on the part of said plaintiffs in said ejectment suits and the defendants herein, pendency of such suits would have been brought to the attention of said association notwithstanding the fraud of said Bradshaw, Walter and Aughinbaugh, as aforesaid, and the said building association would never have advanced any part of the said sum of $20,000.00 to the benefit of the defendants and injury of said building association, as aforesaid."

After the word "cause" in line three of the fourth prayer
52 of said bill insert the following clause: "—; the plaintiff expressly waiving answer under oath."

GEORGE H. LAMAR,
BLAIR LEE,
Solicitors for Plaintiff.

J. J. Darlington, Esq., solicitor for the defendants.

DEAR SIR: Please take notice that the foregoing motion will be called up in equity court No. 1, before Mr. Justice Hagner on May 27th at 10.00 o'clock a. m., or as soon thereafter as counsel can be heard.

GEORGE H. LAMAR,
BLAIR LEE,
Solicitors for Plaintiff.

May 26, 1902.

DISTRICT OF COLUMBIA, *To wit:*

George H. Lamar, being sworn in due form of law deposes and says that the foregoing amendments are offered in good faith, not for the purpose of vexation or delay; that the omissions in said general index were not discovered by plaintiff or the counsel for the plaintiff herein, until about the tenth day of May instant; that the amendments are material and supply an important link in the chain formed by the allegations of the bill, and could not with reasonable diligence have been sooner introduced into the bill.

GEORGE H. LAMAR.

Subscribed and sworn to before me this 26th day of May, 1902.

JOHN A. SWEENEY,
Notary Public, D. C.

[SEAL.]

53 *Order Overruling Motion, &c.*

Filed May 27, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Receiver,
vs.
JAMES A. ASHLEY ET AL. } No. 22257. Equity.

This cause coming on to be heard upon the complainant's application, filed herein on the 27th day of May, 1902, to amend his bill, and having been argued by counsel and duly considered, it is thereupon by the court this 27th day of May, A. D. 1902, ordered that the said application be, and the same hereby is, denied, without prejudice to the complainant to renew his said application at the hearing of the cause.

A. B. HAGNER,
Asso. Justice.

54 *Interrogatories and Cross-interrogatories Propounded to Alexander Allison.*

Filed April 21, 1902.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

JOHNSTON ARMSTRONG, Ancillary Receiver,
Complainant,
vs.
JAMES A. ASHLEY ET AL., Defendant-. } Equity. No. 22257, Docket No. 50.

Interrogatories to be propounded to Alexander Allison, a witness called in behalf of the complainant.

1st. State your name, age, occupation, present place of residence, where you have resided for the past ten years and if connected with the New South Building & Loan Association heretofore, how and when, and if connected or employed by the receiver of and for the said association now or heretofore, please state how and when so employed.

2nd. Did you keep the accounts of the association, or were you in such position with respect to the affairs of the association as to know personally, whether or not one Aaron Bradshaw was indebted to the

association in or about May 2, 1894? If yea, please state the circumstances of his indebtedness and whether he made any payments on account thereof and whether there was default made by him, and if so, when and for what amount?

55 3rd. If you were not in a position or are not personally cognizant of the items covered by the foregoing questions, can you answer the foregoing question, testifying from or producing and quoting extracts from books of account of said association or other books kept by you? If so, please produce and identify the same and incorporate in your testimony, extracts responsive to the above questions from such books of account or record, if any there be.

4th. About or before the date above mentioned, were there any books of the association under your control containing the records of local board charter or local board charters? If yea, please state what such a charter or charters may be and whether any such charter was issued to a local board so called, from the home office of the association in New Orleans to or for any person or persons in the District of Columbia, giving your answer from personal knowledge or from records kept by you then and as above suggested in respect to records or books and also all the details within your personal knowledge or of record in respect to the issuance of any such charter if such charter was issued.

5th. Was there any by-law of the New South Building & Loan Association describing the relationship between it and the local board? If so, please produce, identify and incorporate in your testimony any such by-law or by-laws, giving full sections and paragraphs.

6th. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the sub-

56 ject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

BLAIR LEE,
Att'y for Compl't.

Cross-interrogatories.

Filed April 21, 1902.

The defendants object, separately and specifically, to each of the interrogatories propounded to this witness, and to any answers which may be given thereto, on the ground that the several matters therein and thereby inquired of are *res inter alios acta* in so far as the defendants are concerned, and are without competency, materiality or effect with respect to the defendants, or their rights or interests.

Subject to the foregoing objection, and without waiving the same, the defendants propound the following cross-interrogatories:

1. If, in reply to the direct interrogatories, or any of them, you

have stated the amount of any alleged default or indebtedness of Aaron Bradshaw to the association, state whether, in arriving at the same, you have credited said Bradshaw with the rents realized by or on behalf of the association from the houses on 9th street, between "B" and "C" streets, northeast, in the city of Washington, in
57 the District of Columbia, erected on the lots of ground covered by the deeds of trust securing the advances from the association to Bradshaw.

2. State, from your personal knowledge, if you can, and if not from the books and records of the association, when the association began to receive the rents from the said houses, how long it continued to do so, and through what agent or agents it collected them. Also, for what years, if at all, it or its agents paid the taxes upon the said property while so in receipt of the rents and profits.

3. State whether, in the credits allowed the said Bradshaw for the rents received from the said houses, anything, and if so how much, was deducted, or charged against him, or against the property, for legal expenses incurred by the association in defending the ejectment suits here in Washington against the said Bradshaw for the recovery of the said property from him, and give an itemized statement of the expenses of the said litigation paid by the association, whether deducted from the said rents or otherwise advanced by it.

J. J. DARLINGTON,
For Defendants.

58 *Objections to Cross Interrogatories.*

Filed April 21, 1902.

The complainant objects to the first cross interrogatory and to any answer that may have been given thereto on the ground that the several matters therein and thereby inquired of are, if they occurred or are within the knowledge of the witnesses, incompetent, immaterial and irrelevant, in that, if it shall appear from the answers of the witness- that the default of said Bradshaw occurred at or about May 1894 and the loan to said Bradshaw was antecedent thereto, no rents could have been collected or were collected or were applied or could have been applied in any manner to have a bearing upon or any materiality or relevancy to the default of said Bradshaw.

The complainant objects to the second cross interrogatory and to any answer that may have been given thereto on the ground that the several matters therein and thereby inquired of are, if they occurred or are within the knowledge of the witnesses, incompetent, immaterial and irrelevant, in that they refer to matters and things occur-ing long after the default of the said Bradshaw, and to matters which have no materiality or relevancy to the same.

The complainant objects to the third cross interrogatory and to any answer that may have been given thereto on the ground that the several matters therein and thereby inquired of are, if they

occurred or are within the knowledge of the witnesses, incompetent, immaterial and irrelevant, in that they refer to matters and things occurring long after the default of the said Bradshaw and to matters which have no materiality or relevancy to the same.

BLAIR LEE,
Sol'r for Compl't.

59 In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant, *vs.* JAMES A. ASHLEY ET AL., Defendant-. } Equity. No. 22257, Docket No. 50.

Alexander Allison, of lawful age, a witness on behalf of the complainant, being produced before me, and being first by me duly sworn to tell the truth, the whole truth and nothing but the truth relative to the matters on which he was to be interrogated in said cause, being examined on the interrogatories propounded him, makes oath, deposes and says, as follows:

To the first interrogatory, witness says:

My name is Alexander Allison. I am fifty-one years old. I am an accountant. I reside in New Orleans, La., and have resided here for the past ten years. I became connected with the New South Building & Loan Association as book-keeper on the 15th of July, 1891, and have been in their employ constantly since that time and up to June 3rd, 1899, the date of the receivership. During all this time, the books of the association were kept by me and were in my custody. Since June 3rd, 1899, I have been employed by
60 the receiver of said association as book-keeper and accountant, up to this present time.

To the second interrogatory, witness says:

As I have just stated, in answer to the first interrogatory, I did keep the accounts of the association and the books of the association were in my custody and under my charge. Sometime prior to June 20th, 1893, Aaron Bradshaw, of Washington, D. C., applied for membership in the association, making application for 360 shares of series stock, by making nine applications for forty shares each. At or about the same time, he also applied for nine loans of $4000 each, aggregating $36,000. These applications were sent to the home office of the association at New Orleans, together with the valuation of the real estate offered as security, these applications being signed by Bradshaw and the estimated value of the real estate given by members of the local board at Washington. The chairman of the loan committee at New Orleans did not consider the security property valuable enough, and for this reason, the applications were declined. Subsequent to this date, and prior to September 30th, 1893, Bradshaw applied for membership in the association and subscribed for 200 shares of series stock, of the par value of $100 each, and

this stock was issued to him on the 24th of August, 1893. The originals of his appoication and certificates of stock are in the hands of counsel for the receiver, in Washington. Subsequent to June 20th, 1893, and prior to September 30th, 1893, he also applied for a loan of $24,000, through the local board at Washington. This application, together with all the papers in the matter, consisting of evidences of title, valuation of the land
61 upon which improvements were being made, etc., was laid before the directors of the association, at New Orleans, and a loan authorized to the extent of $20,000, to be paid in installments as the building progressed. On September 30th, 1893, checks aggregating $20,000 were drawn and held for delivery, subject to the proper certificates during the progress of the improvements. Under the terms of the contract, Mr. Bradshaw was required to make payments monthly, as follows: On account of installments $140; on account of interest, $100; on account of premium $100; total monthly payment $340. On account of some delays in connection with the completion of the loan papers, the interest and premium for a portion of the time was remitted. Prior to May 2nd, 1894, the association received from Mr. Bradshaw payments aggregating $1,620.67, which were applied — account of installments, interest and premiums which had accrued. On May 2nd, 1894, he was in arrears to the association, under his contract with them, $846.00. This was reduced on May 7th, 1894, by a credit given him of $126.00, the amount of a deposit which had been made by him with Woods & Co., of Washington, some time previously, and credited to him on the books of the association at this date, making the default on account of installments, interest and premiums, on May 7th, 1894, $720.00. Since that time, no monies were received by the association or by the receiver from Aaron Bradshaw.

To the third interrogatory, witness says:

I am personally cognizant of these facts testified to in answer to the second interrogatory. I do not produce extracts from the books of the association, for I have explained them fully in my answer to the second interrogatory, all of which facts so testified to were taken from the books.

62 To the fourth interrogatory, witness says:

Yes, a local board charter was issued from the home office to the following named directors: J. H. Walter, J. A. Butler, Jr., B. S. Simmons, J. C. Johnson, Dr. Zeno B. Babbitt. A local board charter book was part of the records and in my charge. An application for the charter was sent in by a travelling agent of the association, Mr. Brevard, and the charter was issued on this application, on August 31st, 1893. This charter was written on a numbered blank form and forwarded for delivery to the secretary of the local board. I attach hereto a copy from the stub of the local board charter book, and also a copy of the local board charter. I file this as exhibits to my testimony, in answer to this interrogatory, to be marked A. A. 1 and A. A. 2.

To the fifth interrogatory, witness says:

Yes, there was a by-law in reference to local boards, which was article 8, sections 1 to 8 inclusive, of the by-laws, and the printed copy of said by-laws, which I file herewith as an exhibit to my testimony, is an exact copy of the by-laws, according to the books of the association. Article 8 referred to will be found on pages 18 and 19 of this exhibit. It is marked Exhibit A. A. 3.

To the sixth interrogatory, witness says:

I know of nothing further of interest or advantage to either party to this cause, except that since May 7th, 1894, no payments have been received by the association for account of Aaron Bradshaw, and further that, on February 19th, 1895, February 22nd, 1896, February 19th, 1897 and February 20th, 1898, the association paid four insurance premiums of $50.00 each, aggregating $200.00 to keep the security property insured.

63 *Answers to Cross Interrogatories.*

To the first cross-interrogatory, witness says:

In stating the amount of the default or indebtedness of Aaron Bradshaw, I have not credited him with rents from the house described, because the association never received any moneys from that source.

To the second cross interrogatory, witness says:

To my personal knowledge, derived from the fact that the books were kept by me, no rents from the property described were ever received by the association, nor do the books show that any taxes were ever paid.

To the third cross interrogatory, witness says:

As I stated heretofore, no credits have been allowed Bradshaw for rents, because no rents were received by the association from the house heretofore described. The only expenditures made by the association according to its books, was the following:

$250.00 paid to W. F. Mattingly on April 30th, 1895, as a retainer fee.

The details of his employment are not known to me, but were known to the legal department of the association.

ALEXANDER ALLISON.

Sworn to and subscribed before me this 25th day of April, 1902.

WM. A. BELL,
Notary Public.

64 "EXHIBIT A. A. No. 2."

(Copy.)

Local Board Charter.

No. 215.

New-South Building and Loan Association, city of New Orleans, parish of Orleans, State of Louisiana.

To all — whom these presents may come, Greeting:

This certifies, that the following named persons, residing in the town or city of Washington in the District of Columbia and who are members of the New-South Building and Loan Association, have, with their successors in office, been constituted a local board of said association, as provided in the by-laws, towit:

Officers:

J. A. Walter, president.
—— ——, vice president.
Wm. A. Domer, secretary and treasurer.
Walter H. Acker, attorney.

Directors:

J. H. Walter.
J. A. Butler, Jr.
B. S. Simmons.
J. C. Johnson.
Dr. Zeno B. Babbitt.

65 The said officers shall hold office one year and until their successors are elected. If any officer forfeits his membership in said association, or withdraws therefrom, his office shall thereby become vacant. If a vacancy occurs in any office from any cause, and the same is not filled by election within thirty days, then the president of said association may appoint some member to fill said vacancy. This local board may authorize its treasurer to receive monthly payments from members and remit the same to said association, but said treasurer will be deemed to be the agent of the members and not of said association. It will be the duty of this local board to report in regard to the desirability of loans, and to do all in their power to protect the interests of said association.

In witness whereof, the said New-South Building and Loan Association, has caused this charter to be issued and signed by its president and secretary, at its office in the city of New Orleans, Louisiana, this 31st day of August, A. D. 1893.

[SEAL.]

(Signed) H. GARDES, *President.*

(Signed) H. GINDER, *Secretary.*

66 EXHIBIT A. A. 3.

BY-LAWS OF THE NEW-SOUTH BUILDING AND LOAN ASSOCIATION OF NEW ORLEANS, LA.

ARTICLE I.

Members.

SECTION 1. The word member in these by-laws is used to designate a holder of the series stock of this association.

SEC. 2. Any person may become a member of the New-South Building and Loan Association by subscribing for not less than three shares of the series stock thereof, and paying the admission fee of $1.00 per share, provided his application shall be accepted by the board of directors.

SEC. 3. Every member, not indebted to this association, shall be entitled to one vote, to be cast in person or by proxy, for each share of stock held by him at every meeting of the stockholders of this association, but no member shall be allowed to vote until all arrears due by him are paid.

SEC. 4. No member who has borrowed money shall be allowed to vote on any question affecting the claim of the association against himself.

SEC. 5. On the death or legal disability of a member, his legal representative may withdraw his stock or keep up the payments in the interest of his estate, under the terms and conditions hereinafter provided and established.

SEC. 6. Each member shall make his payments on his stock as hereinafter provided for.

67 ARTICLE II.

Stock.

SECTION 1. Every stockholder shall receive from the secretary a certificate of stock signed by the president and secretary—certificates for guarantee stock shall be issued when the same is full paid; and certificates for series stock shall be issued when a member's application has been approved by the board of directors.

SEC. 2. All stock shall be voted by shares. Any member may authorize another person by written proxy to vote his stock provided that all proxies shall be filed with the president at least fifteen days before the opening of the meeting at which they are to be used. And provided further that no person shall cast more than 500 votes on proxies and no officer, agent or employee of the association shall be allowed to hold any proxies.

SEC. 3. Stock of this association is transferable, but, it shall be transferable only by written instrument signed by the vendor. But no transfer shall be operative or valid until entered on the books

of the association. And a transfer fee of 50 cents for a certificate of five shares or less, $1 for ten shares or less, and $2 for more than ten is paid. Such transfer shall not in any way exempt the person making it from any liabilities to the association created prior to the transfer.

But no stock shall be transferable unless all assessments, dues and fines thereon shall have been first fully paid; and unless all indebtedness of the holder of said stock to this association shall have been first fully paid; and the association shall have a first lien and privilege on all stock for any and all indebtedness of the holder thereof to this association.

SEC. 4. The series stock of this association may be withdrawn under the following conditions:

a. Upon the death of a member his heirs or legal representatives may elect either to withdraw his stock or keep up the payments on the same in the interest of the estate; provided that all indebtedness of the former owner of said stock to this association
68 arising from any cause shall have been first fully paid. In case they desire to withdraw the stock they shall receive from the association its script value of the amount paid in on said stock series stock fund with 6 per cent. interest per annum thereon for the average time, which script shall bear 6 per cent. per annum interest on its face value, payable semi-annually on the first day of January, and the first day of July, of each year, until such time as the series to which the stock of deceased belonged shall have matured. Then the holders of said script shall receive from this association the face value of said script and said script shall be surrendered to this association and by it cancelled.

b. After a member shall have paid his monthly dues on his series stock for more than one year, and shall be free from any an- all indebtedness to this association, from any cause, he shall have the right upon sixty days' notice of his intention being given the association to surrender his stock and withdraw from the association, and he shall receive for his stock so surrendered the script of the association of the face value of the amount paid in, on such stock to the series stock fund, together with 6 per cent. per annum interest on such amount for the average time such amount has been in the association, which script shall bear interest at the rate of 6 per cent. per annum on its face value, payable semi-annually on the first of January, and the first of July, of each year, and shall be paid in full at its face value at such time as the series stock, of the series to which the stock for which it was issued belonged, shall have matured.

c. A fee of $1.00 per share must be paid on every share of series stock withdrawn from this association before maturity, and no such stock shall be withdrawn until said fee has been first paid.

SEC. 5. The guarantee stock of this association shall be paid up at such times and in such installments as the same may be called for by the board of directors.

The series stock shall be paid for in monthly installments
69 of 70 cents per share; or may be paid for by a member in full, either at the time of subscription or at the date when any of the monthly installments fall due.

SEC. 6. All the series stock subscribed for up to June 30, 1890, shall constitute a series, and said series shall be known and designated as series No. 1. All the series stock subscribed for during July, 1890, shall constitute a series, and said series shall be known and designated as series No. 2. And so in this manner all the stock subscribed for in the same month of any year shall constitute a series, and the series numbers shall commence on July 1st, 1890, as above provided, and progress in regular numerical order as there set out.

SEC. 7. Whenever in any case payments upon stock have been in arrears for six months or more, such stock shall be sold at auction at the home office of the association, for the purpose of paying arrearages. The surplus arising from such sale, after paying the back monthly dues and fines, shall be paid to the original owner. If the stock does not bring enough to pay what is due thereon, it shall be bid in by the association and cancelled, and the amount standing to the credit thereof in the series stock fund shall be divided among the other shares as profits.

Whenever any stock is to be sold for arrearages, a notice stating the time and place of such sale shall be mailed to the owner of such stock to his address as the same appears on the books of the association at least ten days before the date of sale. The sale may be adjourned from time to time as may seem best to the board of directors.

SEC. 8. Series stock shall be said to have matured whenever the amount of the monthly payments made on the same together with the amount of dividends declared on and credited to said stock, shall amount to $100 per share. All the shares of the same series shall mature at the same time.

SEC. 9. Full paid series stock is series stock which is paid up to the full amount of $100 per share before the rest of the stock
70 in the same series which is being paid for at the rate of 70 cents per share per month, has matured. After the rest of the stock in the series to which the full paid stock belongs shall have matured, the said full paid stock shall become matured stock, and all matured stock shall be treated in the same way. Holders of full paid stock shall be entitled to have paid to them the full amounts of the dividends declared on such stock up to 5 per cent. semi-annually on the face value of such stock. All dividends over and above 5 per cent. semi-annually on the face value of such stock shall be payable to the holder of such stock when said stock shall have become matured.

SEC. 10. Series stock which shall have matured shall be liquidated by the board of directors in the following manner:

1. When the holder of such matured stock is indebted to the association, the amount of his debt shall be deducted from the face value of his matured stock and for the remaining amount, if there

be any remainder after paying the debt in this manner, the holder shall receive the script of the association in the amount of such remainder, which script shall be issued in the same manner as the script issued to members not indebted to the association and subject to the same condition.

2. For every certificate representing matured series stock the board of directors shall issue to the holder thereof, if he is not indebted in any amount to the association, script of the association, payable two years from the date of the maturity of the stock for which it is issued or redeemable sooner in whole or in part at the pleasure of the association, commencing at the lowest numbered script in the series redeemed and progressing numerically, after sixty days' prior notice published twice a week in one of the daily newspapers published in the city of New Orleans and all interest on said script shall cease at the expiration of the sixty days. This script shall bear 6 per cent. interest per annum on its face value, payable semi-annually on the first day of January and the first day of July of each year, and said script shall be issued in the sum of $100 (neither more nor less) for every share of matured series stock,
71 when the holder of such stock is not in any way indebted to this association.

SEC. 11. After a share or shares of series stock shall have matured, such share or shares shall no longer be entitled to the dividends which shall be declared to the unmatured shares of series stock, but shall be entitled only to the script above provided for.

ARTICLE III.

Fees, Fine, and Monthly Payments.

SECTION 1. The admission fee for all members shall be one dollar per share for every share of series stock subscribed for.

SEC. 2. The payments on each share of series stock shall be 70 cents per month per share. The first payment shall be due on the last Saturday of the month following that month in which the stock is subscribed for, and all payments thereafter shall be made on or before this last Saturday of each month following.

SEC. 3. Any shareholder who shall fail or omit to pay the installments on his shares for the period of one month after the same shall have become due, shall forfeit and pay as a penalty the sum of 10 cents per share per month on each share upon which he has failed or omitted to pay the installments due, and such shareholder shall pay the same penalty on each share for each subsequent similar monthly default; and the said fines must be paid before any other installments or interest can be received; but any shareholder owing fines may have the same remitted by paying all arrearages, and also paying in advance a sum equal to the amount of said arrearages.

SEC. 4. Any series stockholder, if he so desires may make his monthly payments in advance.

SEC. 5. All money due from members to the association, or from it to the members, shall be payable at the home office in New Orleans, La.

ARTICLE IV.

Funds.

SECTION 1. The receipts of this association shall be divided
72 into two classes, which shall be called respectively the "Series stock fund and guarantee stock and expense fund," and each of these funds is constituted as provided for in the charter of this association.

SEC. 2. These funds shall not be kept entirely separate, and separate bank accounts for each shall be kept by the association.

SEC. 3. No money shall be drawn from the "series stock fund" except on resolution of the board of directors and then only for the purpose of paying taxes, making loans to members as hereinafter provided for, or for investment or use for the benefit of the "series stock fund" in the manner contemplated in the charter of this association.

SEC. 4. In case the funds subject to loan are not called for by any member entitled thereto within thirty days after the application for loan has been granted, the applicant's right thereto on that application shall cease and he shall pay one month's interest on the amount of the loan applied for and granted.

SEC. 5. On the first day of the months of January and July, in each year, all undivided profits shall be apportioned and credited to the stock of the association, excepting however the matured shares of the series stock of this association, provided that the board of directors shall have the power, in their discretions, to set aside a portion of said profits to form and constitute a reserve fund.

SEC. 6. No money can be drawn from the series stock fund except on a check signed by the president and treasurer, and such check must contain a mention of the date of the resolution of the board of directors, *i. e.* the date of the meeting at which such resolution was passed, authorizing said check to be drawn.

SEC. 7. No money can be withdrawn from the "guarantee stock and expense fund" except upon a check signed by the president and treasurer, and for a purpose authorized by the board of directors.

73 ARTICLE V.

Certificates of Stock Script.

SECTION 1. Every certificate of the stock of this association shall be signed by the president (or vice-president acting for the president) and the secretary; and all certificates for series stock shall bear the number of the series to which said certificate belongs as also the date when said series began.

SEC. 2. Certificates of stock must also on their face express that they are issued subject to all the conditions and limitations which are expressed in the charter and by-laws; and that said conditions and limitations form a part of every certificate; and that every one who subscribes to the capital stock of this association agrees and takes it subject to all said conditions and limitations, and that every

transferee of the stock of this association takes it subject to all said conditions and limitations.

SEC. 3. All script of this association shall be signed by the president (or vice-president acting as president) and by the secretary of the association, and shall have on it the number of the series of the stock for which it was issued and also the date it is due and the interest it bears, and the pieces of script issued for any series shall be numbered from No. 1 upwards as issued.

SEC. 4. When the script of this association falls due the board of directors may, with the consent of the holder thereof, extend the same for a time not in any case to exceed the length of time for which said script was originally issued.

ARTICLE VI.

Loans.

SECTION 1. The funds of this corporation, which shall belong to the series stock fund, shall be loaned to the members at a fixed premium of fifty cents per month on each $100 borrowed. The rate of interest charged shall be 6 per cent. per annum, payable monthly, on the money actually loaned. Any member may apply for a loan
74 equal to the full paid face value of the series stock to which he has subscribed after thirty days from the date of his or her first monthly payment on his or her stock, and if the application is approved the member will be served in turn according to the date of his or her application within the discretion of the board of directors, and all loans shall bear interest from the date of the day that the applicant is notified that his loan is granted.

SEC. 2. All applications for loans out of New Orleans must be made through the local branches, and must be approved by them before they can be approved and granted.

SEC. 3. An abstract of the title to the property offered as security for a loan must accompany the application.

SEC. 4. The applicant for a loan must pay for the abstract of the title, for the recording of the deed, and for all other expenses connected with the loan.

SEC. 5. If the loan is granted the expenses thereof, unless otherwise provided for, may be deducted from the amount of the loan.

SEC. 6. Loans will be made to members alone and only upon real estate unencumbered, or upon unpledged shares as hereinafter provided.

SEC. 7. Loans upon real estate must be secured by vendor's lien and privilege and first mortgage upon the property offered as security and by a transfer of the policy of insurance on the building offered as security, when the property is situated in Louisiana, and when the property is situated in any other State, by deed and bond and transfer, of policy of insurance on the building.

SEC. 8. No agent has authority to promise a loan within any specified time, as all applications for loans are considered according to date, and within the discretion of the board of directors.

SEC. 9. All parties borrowing money from the association on real estate shall be required to pay taxes as they fall due on the property given as security.

SEC. 10. Every applicant for a loan must make his applica-
75 tion on the form furnished by the association for that purpose, and in the manner set out in such form.

SEC. 11. If any property offered to this association by an applicant for a loan shall embrace improvements, or improvements are about to be erected thereon, such improvements shall be insured by the applicant at his own cost and the policy of insurance shall be transferred to this association to cover the amount of the loan until said loan is repaid; and all policies shall be renewed and turned over to the association by the borrower at least forty-eight hours before they expire, and should the borrower fail so to do the association shall have the right to itself renew all such policies and charge the premium thereon to the borrower as a part of his loan.

SEC. 12. A member desiring a loan shall advance $10 for the purpose of securing the payment of the expense of making the loan.

SEC. 13. No loan shall be made unless the application for the same is approved by the loan committee. Every such application shall be also approved by the general attorney of the association.

Loans without Real Estate Security.

SEC. 14. Any member who has shares unpledged as security may after one year from date of his or her certificate borrow an amount not to exceed 90 per cent. of their withdrawal value at rates same as a borrower with real estate security upon transferring his or her certificate to the association as collateral security.

SEC. 15. No fees shall be charged upon loans made upon certificates of stock.

SEC. 16. Loans on real estate may be repaid at any time on thirty days' notice. If a borrower neglects to pay any interest, dues or monthly payments for a period of two months from the time the same shall be due, or if he neglects to pay his insurance, taxes or assessments on the day that they fall due, then the whole principal mentioned in the mortgage, and note or bond shall at once become due and payable without notice, and proceedings may be commenced forthwith to foreclose such mortgage or to collect said bond or note in such manner as the board of directors may deem best.

Amendment to section 14, article VI, of the by-laws of the New-South Building and Loan Association.

No loans shall be made on public halls, theatres, churches, meeting-rooms or school houses, nor on farms or plantations. By resolution of October 15th, 1890.

Amendment to section 3, article VI, of the by-laws of the New-South Building and Loan Association.

An applicant must also send in with his application, $5.00, to

cover the expense necessary for the consideration of the same. By resolution of December 12th, 1890.

Amendment to section 3, article VI, of the by-laws of the New South Building and Loan Association.

An abstract of title to the property offered as security for a loan, must accompany the application, unless the board of directors otherwise permit. By resolution of January 9th, 1891.

76 ARTICLE VII.

Officers and Their Duties.

SECTION 1. Board of directors.—The board of directors of this association shall consist of ten of the stockholders of the association, qualified and elected as the charter provides.

SEC. 2. The board of directors, as soon as elected, shall hold a meeting and elect a president, vice-president and appoint a secretary, a treasurer, a general attorney and a general manager, to hold office during the pleasure of the board unless removed by the action of a majority of all the board of directors provided that all the officers above named shall hold office until their successors are appointed; and the directors may also appoint at any time all such employees and agents as may in their judgment be deemed necessary to transact the business of the association. And the board of directors shall have power to fix and pay the compensation of all officers, agents and employees.

SEC. 3. The board of directors shall have power to fill vacancies that may occur in their body, and for what in their judgment is sufficient cause may remove the officers or employees of their appointment and appoint their successors. But all vacancies must be filled at the next regular meeting of the board.

SEC. 4. The president may call a meeting of the directors whenever he may deem it necessary upon one day's notice; and it shall be his duty to call such special meetings when an application in writing, signed by three directors, shall be made to him for that purpose.

SEC. 5. The directors shall have general supervision, direction and management of the affairs of the association, and the duties of the officers, and shall judge of the sufficiency of the value of property offered by members as security for advances made by this association. They shall select the bank or banks in which the funds of this association are to be deposited.

SEC. 6. They shall audit the accounts of the secretary and
77 treasurer, and all claims or bills against the association, and shall have access to the books of the association at all times. All bills certified by them as correct shall be paid without further action when signed by the president and countersigned by the secretary. For the purpose of obtaining a successful business management, the board of directors may turn over and *to* pay — any person or persons with whom it contracts, or the agent or agents which it

appoints, what is known as the "guarantee stock and expense fund," or such portion thereof as is deemed best; *Provided*, That all salaries and all the expenses of said corporation, except taxes and aside from insurance and taxes on property on which loans are outstanding, shall be wholly paid by said "guarantee stock and expense fund;" and the persons so contracted with, or the agent so employed, must rely solely for their compensation upon the balance remaining after paying such expenses, and no part of the series stock fund can be used for such expenses, or compensation or salaries. Such contract or contracts may cover such a period and contain such covenants as the board of directors may deem advisable.

SEC. 7. Four members of the board of directors shall constitute a quorum for the transaction of business.

SEC. 8. All loans shall be approved and made by the board of directors.

The president.

SEC. 9. The president, or in his absence the vice-president, or in his absence any member the association may select, shall preside at meetings of the stockholders. The president, shall, for the board of directors, sign all certificates of stock, script, and all orders upon the treasurer for the payment or appropriation of money ordered by the board, and shall perform all other duties appertaining to the office. He shall execute promptly all deeds, conveyances, mortgages and contracts to which the association is a party or has an interest when authorized to do so by the board. He shall have power to suspend any employee until the next meeting of the board of directors.

78 The vice-president.

SEC. 10. The vice-president shall perform all the duties of the president during the absence or disability of the president.

The secretary.

SEC. 11. The secretary shall keep correct minutes of the proceedings of the stockholders and of the board of directors, attest certificates of stock and all orders drawn upon the treasurer for the payment or appropriation of money ordered by the board and shall notify the directors of all stated and special meetings of the board. He shall receive all money paid into the association, pay the same over to the treasurer and take his receipt therefor. He shall keep the accounts and all necessary books and papers of this association, except those in charge of the treasurer, and deliver the same at the end of his term to his successor in office, within two weeks after the election of such officer. He shall be prepared at all meetings of the board of directors to give correct information of the financial and other condition of the association, and shall perform all other duties required by the by-laws or rules and regulations of the board of directors. He shall also give bond for the faithful performance of

his duties before entering thereon, in such amount in a sum not less than $1,000 and with such security as the board of directors may require. He shall receive such remuneration for his services as the board of directors may determine.

The treasurer.

SEC. 12. The treasurer shall receive all money as soon as paid into the association and give his receipt for the same to the secretary, and pay all orders of the board of directors, signed by the president (and attested by the secretary). He shall have charge of all deeds, bonds, mortgages, contracts, or other securities belonging to this association, and shall keep a correct account of all moneys received and paid out, in a book to be provided for that purpose, which shall at all times be subject to the call and inspection of the board of
79 directors. He shall make a report of the transactions of the month, as well as the actual state of the finances of the association at each regular meeting. He shall give satisfactory security for the faithful performance of his duties before entering thereon, in such amount—not less than $1,000—as the board of directors may require. He shall receive for his services such sum as the board of directors may determine.

The general attorney.

SEC. 13. The general attorney shall advise the board of directors and the officers of this association in regard to all matters of law relating to the business and affairs of this association. He shall examine the reports made on all property offered as security for a loan to be made by this association and especially the abstracts of the title of said property, and shall give a written opinion upon all such applications and abstracts. He shall prepare all bonds, deeds, and agreements and other writings of a legal nature to be given or taken by this association at its domicile. He shall appear as counsel for the association in all suits at law or in equity, brought by or against it at its domicile. He shall make inquiry into the character and ability of all attorneys selected by local boards and shall report the result of such inquiry to the board of directors. If it become necessary to appoint an assistant attorney at New Orleans, either permanently or for any particular time or in any particular case, he shall make such appointment subject to subsequent ratification by the board of directors. He shall receive for his services such sum as the board of directors may determine.

The general manager.

SEC. 14. The general manager shall have charge of the agents, special agents and general agents, and shall direct their movements, appoint or remove them. He shall countersign all certificates of authority issued to agents, and direct the preparation of such printed matter as may be necessary from time to time. He shall receive

such compensation for his services as the board of directors may determine.

80 Loan committee.

SEC. 15. A "loan committee" consisting of three members of the board must be appointed to examine all applications for loans and must make a report thereon to the board. And no loan can be made unless it be recommended by said committee.

ARTICLE VIII.

Local Boards.

SEC. 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in such town may organize from their number a local board or branch of the association. Such board shall consist of not less than five nor more than nine directors, and these directors shall elect from their number a president, secretary, treasurer and attorney. These officers shall hold office one year and until their successors are elected. Provided that said board is approved by the board of this association.

SEC. 2. As it frequently happens that a meeting of the local members cannot be held as soon as is desirable, the traveling agents of the association are given authority to appoint the first officers of the local board, to serve until the said board meets and appoints its officers regularly.

SEC. 3. It shall be the duty of the local boards to pass on all applications for loans, which are received by the association from members residing in the town in which such local board is located, and to protect the interests of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer; but such local treasurer shall be deemed to be the agent of the members, and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected, and the names of such officers have been certified to the association by a traveling agent or by the local secre-
81 tary a local board charter shall be issued to such board, provided that the board of this association approve said local board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

SEC. 7. All applications for loans made to a local board and by it approved, shall be transmitted at once to the office of this association in New Orleans, La., signed by the president, secretary and attorney of the local board on the form furnished by this association to applicants for a loan.

SEC. 8. Every application for a loan coming through a local board must be approved by a majority of such board, provided that such majority shall not in any case be less than four.

ARTICLE IX.

Elections.

SEC. 1. All elections by stockholders shall be by ballot. Every stockholder shall be entitled to one vote for every share that he holds, subject to the conditions above stated.

SEC. 2. Elections by the board of directors may be by ballot or *viva voce*, as the board may in each case determine.

ARTICLE X.

Meetings.

SEC. 1. The first meeting of the stockholders of this association for the purpose of electing a board of directors shall be held at the office of the association on the second Monday in January, 1895, at 10 a. m., and on the same day of the same month, at the same hour, at the same place, on each and every fifth year for the same purpose.

SEC. 2. A special meeting of the stockholders of this association may be called whenever the board of directors pass a resolution to that effect.

SEC. 3. The board of directors shall meet regularly on the second Friday of each and every month and as much oftener as they may deem advisable.

82 SEC. 4. A special meeting of the board of directors shall be called when three directors make such a request in writing, or may be called at any time by the president (in his discretion) provided notice twenty-four hours in advance be given to all directors at that time in the city of New Orleans, La., and that the matter to be considered be specified in the notice of the call.

SEC. 5. At least thirty days prior to any special or regular meeting of the stockholders of this association, a notice stating the time and place and object of such meeting shall be deposited in the postoffice at New Orleans, La., directed to each member at his address as the same appears at the time on the books of the association, and shall be deemed a legal and sufficient notice of any annual or special meeting.

SEC. 6. Information of any other matter of which members need notice may be given in a similar manner. In case of a change of postoffice address of a member, notice thereof shall at once be given to the secretary.

ARTICLE XI.

Order of Business.

SEC. 1. The order of business of meetings shall be as follows:

1. Call to order.
2. Roll call.
3. Reading of minutes.
4. Election of officers.
5. Reports of committees.

6. Treasurer's report.
7. Secretary's report.
8. New business.
9. Adjournment.

SEC. 2. The regular order of business may be suspended at any time upon consent of two-thirds of the votes present.

83 ARTICLE XII.

Application of Insurance Money.

SEC. 1. In case of loss or damage by fire of any building mortgaged or deeded to the association and insured, the insurance money shall be received by the board of directors, and shall be used to rebuild the house, if the member so desire; otherwise it shall be applied to liquidate the debt of the member to the association; the balance, if any, to be paid over to the member, after all his indebtedness to the association shall have been fully paid.

ARTICLE XIII.

Amendments.

SEC. 1. Every amendment to the charter of this association must be submitted in writing and read to the board of directors at a regular meeting of the board, and at the next regular meeting of the board the directors shall decide by a majority vote of the directors present whether the amendment proposed shall be submitted to the stockholders of the association in the manner set out in this charter. If the directors decide that the amendment is to be submitted to the stockholders, they may in their discretion call a meeting of the stockholders and submit the proposed amendment to them all in the manner provided for in the charter; if the directors decide that said proposed amendment shall not be submitted to the stockholders, said amendment shall not be so submitted.

SEC. 2. The by-laws may be amended with the consent of a majority of the board of directors, but every amendment to the by-laws must be submitted in writing and read to the board of directors at one of their regular meetings, and such amendment cannot be voted upon before the next regular meeting of the board, and no such amendment can be voted on except at a regular meeting of the board.

84 (*Stipulation of Counsel on Last Page of Return of Commission.*)

APRIL 21ST, 1901.

We consent that the above testimony was taken without further notice and stenographically and reduced to typewriting.

J. J. DARLINGTON,
For Defendants.
BLAIR LEE,
For Complainant.

85 *Testimony for Complainant.*

Filed October 23, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant, *vs.* JAMES A. ASHLEY ET AL., Defendants. } Equity. No. 22257, Docket 50.

WASHINGTON, D. C., *April* 29, 1902, Tuesday, at 7.30 p. m.

Met, pursuant to agreement of counsel, at the offices of Blair Lee and George H. Lamar in the Fendall building, 344 D street, N. W., to take testimony on the part of the complainant in the above-styled cause.

Present: Mr. Blair Lee and Mr. George H. Lamar for complainant; Mr. J. J. Darlington for defendants.

Whereupon—

JOHN HANSON KENNARD.

Direct examination.

By Mr. LAMAR:

Q. State your name, residence and occupation? A. John Henson Kennard; New York city; editor.

Q. Where did you reside in 1893 and 1894? A. In New Orleans, La.

Q. What was your occupation at that time? A. I was the general attorney of the New South Building and Loan Association of New Orleans.

86 Q. Please state the whole of your connection with said association—when, and in what capacity you were first employed and when your connection with the association ceased? A. I was one of the original incorporators of the New South, one of its board of directors, its general attorney and managing director from 1890 up till 1897—December 1897; in 1895, I think, I became president, in addition to being general attorney and remained such until the end of 1897, when I severed my connection with the association.

Q. Have you any interest in the association now or in the subject matter of this suit? A. Only as a stockholder.

Q. Mr. Kennard, I show you a certified copy which constitutes Exhibit C to the original bill in this cause in which your name appears as trustee on a deed of trust executed by one Aaron Bradshaw and wife on the 28th day of October, 1893—state whether or

not you are the party mentioned in that paper as such trustee. A. I am the Kennard mentioned as such trustee.

Q. State whether or not you recollect the transaction with respect to which this was executed—with Aaron Bradshaw? A. I am familiar with the transaction with respect to the preliminaries which led up to the application for a loan by Bradshaw, the consideration of that application, by the New South and with the steps taken to complete the transaction after the approval of Bradshaw's application for loan.

Q. Do you know these matters of your own personal knowledge? A. I am thoroughly familiar in a general way, of my own knowledge; as to the exact dates, I would have to refer to the papers. I was in entire charge of the *the* affairs of the company, subject, of course, to the review of its board of directors.

Q. Will you state the preliminaries with regard to the transaction?

87 Mr. DARLINGTON: I object to this question and to all similar questions and any answers thereto, on the ground that the matters inquired of are *res inter alios actæ* in so far as the defendants are concerned and are without competency, materiality or relevancy with respect to the defendants or any rights or interests they may have herein.

NOTE.—It is agreed between counsel for all parties that the foregoing objection of defendant's counsel may apply throughout this examination without the duty or necessity of reiterating the same upon the record.

A. There being in existence in Washington, District of Columbia, the application was received from Aaron Bradshaw of that place. Said application was submitted in due form to the board of directors of the New South and by that board approved in the terms shown by the resolution passed in regard thereto. I guess that is all of the preliminaries—as a general statement.

Q. Will you look at the paper handed you and state whether or not that is the application to which you refer? A. That is the application.

Q. State whether or not the indorsement on the back of the application, is the resolution to which you refer? A. The indorsement under the head of "report of loan committee" is the resolution to which I referred.

Mr. LAMAR: I offer this application in evidence, to be appropriately marked.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 1."

Q. State what, if any precautions were taken with respect to the title of the property, prior to the consummation of the transaction? A. In accordance with the regular practice of the association on approval of applications for loans, steps were taken to
88 ascertain that the applicant had a clear title to the property

offered as security. In this particular case, there was a chain of title which had been offered in connection with a previous application from the same party, Bradshaw, and denied. The papers were prepared for this loan which was approved and sent forward with the chain of title which had been offered in connection with the former application which was refused, and which covered the property offered as security for this loan. With the papers was what was known as the "loan slip" which was furnished their attorney or the person having in charge the closing of loans from the association, and which enumerated the requirements of the association with respect to the closing of transactions. In addition to the loan slip there was sent with the papers in this case, a letter of instructions to the local attorney, calling particular attention to the requirements of the New South. That loan slip states——

Mr. DARLINGTON (interposing): I object to the witness stating what the slip states, because the paper itself is the best evidence—this in addition to my former general objection.

WITNESS (continuing): It shows the requirements as to title of the property offered as security.

Q. Will you identify the paper which I hand you and state whether or not that is the loan slip used in this particular transaction? A. That is the slip; yes, sir.

Mr. LAMAR: I offer this slip in evidence, to be appropriately marked.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 2."

Q. State if this loan slip was sent on with the letter which you spoke of? A. The loan slip was always made out in dupli-
89 cate; one was sent to the local attorney and one retained by the association in order that the attorney might have one for his information and the association have one to check off the transaction

Q. And is this the duplicate? A. This is one of the duplicate copies of the slip made out in connection with this transaction.

Q. Will you look at the letter handed you, dated October 23rd, 1893 addressed to local attorney, New South Building and Loan Association, Washington, D. C., and state whether or not that is the letter of instructions to which you referred?

Mr. DARLINGTON: Let it be understood that my objection made heretofore, applies to this paper as well as to the oral statements of the witness.

A. That is the letter sent on with the loan in question and in further explanation of the loan slip referred to and introduced in evidence.

Q. When you say local attorney, to whom do you refer—state what was the custom of the association, under its by laws, in regard to local attorneys?

Mr. DARLINGTON: In addition to my former general objection, I object specifically to the customs of the building association with respect to local attorneys, as being without competency in this case.

A. The rule of the New South in regard to local attorneys was that the shareholders of any local branch should select an attorney to represent the association at that place, and transactions of a local nature were put in his charge and loans, particularly, were consummated by him, and papers were sent to him for such action as was necessary for the completion of a loan.

Q. You referred to certain title papers—certain title papers having been delivered to your association in connection with a
90 prior application will you look at the papers handed you and designate which of them were so received and transmitted by your association for the local counsel in connection with the particular transaction about which inquiry is now being made? A. Of the five papers on the back of which is "Abstract of title of land of Aaron Bradshaw, Washington, D. C., application No. 1482, loan No. —," the yellow pages, at the head of which is the caption, chain of title for J. H. Walter, Esq., from the records of the Real Estate Title Insurance Company of the District of Columbia, and the four white pages following. Said yellow pages were sent on with the papers to complete the loan to Aaron Bradshaw heretofore referred to, under application for loan filed and marked for identification. Said white pages are signed on the third white page by W. E. Aughinbaugh.

Mr. LAMAR: The papers to which reference is made, together with other papers attached to them, are offered in evidence.

NOTE.—And the same are filed by the examiner, marked "Exhibit W. W. M. No. 4."

Q. Will you state when, if at all, a report was made by the attorney for the local board, in connection with this reference to him, and if so please identify the same. A. The local attorney's report in compliance with instructions on the loan slip heretofore introduced in evidence and the letter accompanying the same, as to the property being free from incumbrances was made of date the first of November, 1893, as appears from the certificate of Walter H. Acker, which is a part of Exhibit No. 4.

Q. State whether or not all of the papers in Exhibit 4 were transmiteted by said Aaron Bradshaw to said association, in con-
91 nection with his said certificate? A. They were transmitted as his abstract of title and attorney's certificate, as indicated on the cover of said documents.

Q. State whether or not you ever read or were cognizant of the contents of, an equity suit referred to in said title papers, as having been dismissed, either prior or subsequent to the making of the loan—I refer to the suit in equity No. 12,318, of Nehemiah B. Ashley and others against John H. Walter? A. I was not cognizant of the contents of it, no, sir.

Q. You spoke of a prior application of said Bradshaw—state about when the same was made and for what amount, and for what reasons, if you remember, the same was rejected? A. The prior application was made some months preceding the one under consideration, and was for the amount of $36,000. The application was refused for three or four reasons the principal of which were, first, the chain of title showed the existence of a suit in regard to the title of the property. The association never considered applications when there was any cloud on the title of any kind. Second, because the application was for more than thirty thousand dollars, and under the rules no member could hold more than three hundred shares, par value thirty thousand dollars, and no loans were made, except to members, consequently no loan could be made for more than thirty thousand dollars.

Q. In speaking of said suit, state whether or not you referred to the equity suit to which reference was last above made—take the title papers and refresh your memory, if you care to. A. My general recollection is that there should be a letter showing that.

WITNESS (continuing): It was the suit of Ashley against Walter, No. 12,318.

92 Q. Mr. Kennard, state whether or not the loan would have been approved but for the dismissal of said suit.

Mr. DARLINGTON: I object to the question, as calling for hypothetical evidence; this, in addition to my preceding general objection, which will apply to all of these questions.

A. It would not have been made, unless the title appeared absolutely clear in the applicant for the loan, as one of the absolute and invariable rules of the association, never violated, in fifteen hundred loans, during my incumbency as managing director, was that no loan should be made unless the title to the property offered as security was absolutely clear in the applicant for the loan.

Q. State whether or not at this time or at any time, preceding the actual payment of the advances subsequently made by the association on this application, your association had any notice or knowledge of the pendency of any ejectment suits in the supreme court of the District of Columbia, with regard to or affecting the lands involved in this transaction? A. It had no knowledge of any such suits. No part of the loan would have been sent forward had it had such notice. Our instructions to local attorneys were clear and explicit to the effect that an invariable requirement for the completion of a loan was a title clear and free from all incumbrances in the borrower at all times during the transaction.

Mr. DARLINGTON: I object to the latter part of the answer, in addition to my former general objection, because it is incompetent for the witness to detail the character of instructions to local attorneys, these instructions, themselves, being the only competent evidence of their nature and contents.

Q. Mr. Kennard, in addition to the title papers, which constitute

"Exhibit No. 4," state whether or not anything purporting to be from the applicant himself was received by your association
93 before the granting of the loan, in regard to the title being clear of incumbrance, and if so state what, if any document, there was received by you? A. There was an affidavit of Aaron Bradshaw, the applicant for the loan.

Q. Will you give the date of it? A. It is in the handwriting of Mr. Acker, dated October 31, 1893, signed by Aaron Bradshaw, witnessed by Leta M. Morse, sworn to before a notary public.

Q. State whether or not this paper is the one to which reference is made, showing witness paper? A. This is the paper submitted in connection with the title to the property.

Mr. LAMAR: I offer this paper in evidence.

NOTE.—And the same is filed by the examiner, marked Exhibit W. W. M. No. 5.

Q. Mr. Kennard, on "Exhibit 3" the words "Walter H. Acker, attorney" appear in different ink from the balance of the letter—the latter is addressed to "Local Attorney New South Building and Loan Association, Washington, D. C."—if you can give an explanation of this, please do so. A. At the time this letter was written, October 31, 1893, it was not known by the New South who the local attorney of the branch at Washington, was; therefore, the letter was written as addressed, to the Local Attorney of the New South Building and Loan Association, Washington, D. C., with the name filled in apparently by the local agent at Washington, as the type clearly would indicate, such filling or insertion being Walter H. Acker.

Q. You spoke of being a stockholder in this association. State what character of stockholder you are and whether you are
94 personally interested in the outcome of this suit? A. So far as the outcome of this suit is concerned, I have no interest of any kind. My holding of stock is in what is known as the guaranteed stock, which participates in its own assets and not in the general assets of the association; and the loan to Bradshaw or any proceeds thereof belong to the general assets, so that I have no pecuniary interest in the result of this particular controversy.

Q. State, after the application for a loan was approved and the company became satisfied with the title, what course was pursued in regard to setting apart and eventually paying over the amounts advanced? A. The usual course of building and loan associations—the money was passed to the credit of the borrower, checks were drawn as of the date of the loan, aggregating the amount of the loan to be sent forward according to the terms of the application under which the loan was approved. This particular loan being made in instalments for the purpose of erecting improvements on the security property.

Q. State whether or not there was any modification of the original resolution in so far as the instalments to be paid as the buildings progressed are concerned, and if so what, if any, instalments were increased or diminished. A. The modification was made in the

amount of the instalments to make them correspond, to the best of my recollection, with the building contract of the borrower, the last instalment, which was to be paid ten days after the completion of the buildings, and the delivery of the same free of all liens was increased from five thousand dollars to seven thousand dollars, being two thousand dollars more of the last instalment than the amount agreed upon by the board of directors.

Q. State what course was pursued in regard to the delivery of these instalments and state as near as you can the time that
95 each instalment was sent on to the local attorney for delivery—refresh your memory, if you care to. A. I would have to refresh my memory, because I don't carry that in my head. (Witness consults memoranda.) The instalments of the loan were forwarded as follows: First instalment, fifteenth of November, 1893, four thousand dollars; second instalment, ninth of December, 1893, three thousand dollars; third instalment, January 12, 1894, four thousand dollars; fourth instalment, February 15, 1894, two thousand dollars; fifth instalment, March 20, 1894, seven thousand dollars.

Q. State what precautions were taken in regard to the payment or delivery through the local counsel, of the first instalment and exhibit with your answer the papers received by you, if any in connection therewith. A. Proof was required to be furnished that the borrower had himself paid that proportion of the loan which he was to advance to the association under the provisions of its loan and evidence of that is contained in the paper to which I refer. The other instalments of the loan were forwarded on evidence furnished by the local board certificates, the builder's receipts, showing the expenditure by the borrower of the amounts indicated in the contract for the improvements on the security property and his receipt from builders or materialmen for such expenditures—builders or materialmen employed on such construction. Such certificates and receipts correspond in each instance with the instalments of the loan, each showing that the payments were made, as the building progressed towards completion, under the terms upon which the loan was approved.

Q. Look at the five papers handed you, marked "Application 1482. Loan 1066" and state whether or not they are the papers to which you have referred in your last answer. A. They are.

96 Mr. LAMAR: I offer these five papers in evidence.

NOTE.—And the same (attached together and marked as one exhibit) are filed by the examiner and marked "Exhibit W. W. M. No. 6."

Q. State whether or not these are all of the certificates which were given in connection with these payments, or whether or not any one of them appears to be missing. A. Certificate number 4 appears to be missing.

Q. State whether or not the succeeding number embraces the information which would have been contained in the missing paper.

A. Certificate number six shows the last payment of seven thousand dollars on account of the entire transaction and therefore indicates that the previous instalments were paid in accordance with the terms of that certificate.

Q. Will you look at the paper which I hand you marked "Affidavit of contractor" and state whether or not that paper was also received in connection with the final instalment? A. That paper is one always required upon completion and before the payment of the last instalment of a loan and that paper in this transaction, indicates the completion of the improvements at the stipulated price and the freedom of the property from liens.

Q. Do you know at what times these several checks were actually turned over by local counsel to said Bradshaw? A. Only as I could ascertain the same from the letters of the local attorney who had charge of the matter, so far as turning them over was concerned.

Mr. LAMAR: I offer in evidence this final certificate of the contractor.

NOTE.—And the same is filed by the examiner and marked
97 "Exhibit W. W. M. No. 7."

Q. State whether or not, on March 20, 1-94, the date the last instalment was forwarded for delivery to the borrower if the property was completed—the improvements completed—and the property free from liens, that Bradshaw was in arrears to the association to the extent of $126.00? A. If you will let me refresh my memory with the letter sent forward with the check, I can tell you. (After looking at letter.) One hundred and twenty-six dollars was the amount then due by him. Checks were never to be turned over unless the borrower had paid the amount du- by him at the time the check was to be delivered. That was the nature of our instructions in all cases—in this case.

Q. State whether or not, in the summer or fall of 1894, you had occasion to consider the question of instituting foreclosure proceedings against said Bradshaw? A. I did.

Q. State the cause or what you recollect in regard to said Bradshaw being in arrears on his payments? A. I instructed the assistant attorney of the company, Mr. Johnston Armstrong, who had charge of all such matters to foreclose the lien of the company unless all delinquent amounts were immediately settled.

Q. State whether or not, as trustee, you signed any paper in connection with such foreclosure proceedings, and if so, what? A. I signed the advertisement of sale as I recollect it, together with the other trustee and forwarded it to Washington for the purpose of selling the property under the deed.

Q. Look at the paper I hand you and state whether or not that is the advertisement to which you refer and state whether that is your signature to the paper, also state to whom you sent the
98 advertisement? A. That is my signature; the J. H. Kennard is my signature. The advertisement was sent to Mr. Acker

for publication. (Advertisement is offered in evidence by Mr. Lamar and filed by examiner marked "Exhibit W. W. M. No. 8.")

Q. State whether or not you made arrangements to come on to Washington in connection with such sale? A. I did, as I was advised that it was necessary for one of the trustees to make the sale in person.

Q. What was the time set for the sale? A. It was originally, I think, the 12th. of September; I think it was changed and finally fixed for the eighteenth of September.

Q. State why the sale was not made on the date mentioned? A. Mr. Acker, in a letter advised me——

Mr. DARLINGTON (interposing): I object to any statement of the contents of the letter.

WITNESS (continuing): I was advised that a cloud upon the title had been discovered.

Mr. DARLINGTON: I am compelled to again object and call for the production of the letter.

Mr. LAMAR: The letter to which reference is made is here produced, dated September 11, 1894; I here produce it in responce to the demand of counsel for defendants.

Mr. DARLINGTON (to witness): Is this the letter? A. Yes, sir.

Mr. LAMAR: I offer this letter in evidence to be appropriately marked.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 9"

Q. State whether or not, prior to the receipt by you of said letter, the association was cognizant of or ever previously received any information, directly or indirectly respecting the existence of
99 any ejectment suits with regard to the property involved in this proceeding? A. It was not and it had not.

Q. State whether or not the association received from the plaintiffs in said suits or from anyone else, prior to the payment of the last instalment of said loan or prior to the receipt of said communication from said Acker, any notice of their claim to the land in controversy? A. It did not.

Q. What were the postoffice addresses of the New South Building and Loan Association, yourself and Mr. Johnston Armstrong, from the time of the application for said loan until you severed your connection with said association? A. New Orleans, La.

Q. Would letters so addressed during such time, have been delivered in due course of mail? A. They would.

Q. Did you receive any notice from anyone—your association or yourself—with regard to the erection of the buildings erected on the land involved in this controversy, prior to the final payment on account of this loan on the ground of any claim to the land adverse to said Bradshaw? A. No.

Q. State whether or not the loan was made in good faith and

whether there was any suspicion on the part of the association as to complicity of any parties with said Bradshaw in the premises? A. The loan was made in good faith and there was no notice to the association that there was any defect of title in Bradshaw or that there was any irregularity whatsoever. Repeated instructions were given to the attorney to see that before the money was turned over, that every requirement with respect to the title was met.

100 Mr. DARLINGTON: I object specifically to the latter part of the answer, by which I mean that I object in addition to the general objection heretofore made on the ground that the letters and communications containing these instructions are the only competent evidence of them and these letters are called for.

Q. After the receipt of the letter of Mr. Acker of September 11, 1894 state whether or not you agreed with him to the extent of its being advisable for the association to retain counsel of its own in this suit? A. Yes, I did agree with that view.

Q. Eventually whom did the association employ as its counsel? A. Mr. William F. Mattingly.

Q. You spoke of having a local agent of the company here at one time—who was he? A. Mr. V. Brevard.

Q. State whom, if any one, Mr. Brevard nominated and selected as the first attorney for the local board. A. W. E. Aughinbaugh.

Q. Did you ever see Mr. Aughinbaugh? A. I did.

Q. Where? A. At his office in the city of Washington.

Q. State whether or not, in your personal intercourse with Mr. Aughinbaugh, there was anything in his appearance or otherwise which led you to believe that he was not a competent and trustworthy person for such position? A. There was nothing in his general appearance or in the conversation which I had with him which indicated it. I thought he was an average lawyer. I had

101 no opportunity for an exhaustive test of his ability, but I set him down as *as* an average young man, rather presentable in appear*end* and of good bearing.

Q. State what was the course taken in this case and the custom of the association in regard to the selection of counsel for local boards prior to the inception of such boards.

Mr. DARLINGTON: I object to the custom of the association as incompetent.

A. The local agent selected the local attorney, subject to ratification or change at the hands of the stockholders in Washington upon taking formal action in regard to such officer or attorney.

Q. State whether or not charters to such boards were ordinarily issued till a loan was ready to be made. A. Generally a charter was issued when the organization in any place had reached a point as indicating a sufficient holding of stock to constitute a branch.

Q. State whether or not the stockholders were required to be consulted before the local attorney was recognized as the local attorney of the board. A. The local stockholders had the say as to the se-

lection; the local agent made the selection subject to the approval or disapproval of the stockholders.

Q. State what if any not-, prior to the making of the last payment, the association was advised of any then existing interest of John H. Walter or any other me-ber of the local board in the land in controversy or in the loan to be obtained? A. It was not.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Kennard, I believe you stated that you were the
102 general attorney of this association from its organization till 1897? A. I was the general attorney till about 1895 and then both the general attorney and the president.

Q. How long had you been a lawyer at the time of your first connection with this association in 1890? A. I think I was admitted to the bar in 1885 or 1886—1885, I believe.

Q. What other attorney besides yourself did the association have? A. They had one assistant, Mr. Johnston Armstrong.

Q. How long had he been a lawyer in 1893? A. He was admitted the year after I was, I think; that is a matter that I cannot testify about absolutely—that is my recollection.

Q. If I understand you, before making this loan you required to be furnished with an abstract or certificate showing a clear title to the property in the borrower? A. Yes, sir.

Q. Exhibit Number 4 is the abstract upon which you relied in this transaction? A. Yes, sir.

Q. You examined that paper? A. Yes, sir.

Q. You found, did you not, that George Walker became the original grantee of this property in 1792 or more than a century before you made this loan and that with the exception of some old mortgages and assignments which the abstract says are without validity, the next steps in the title upon which you were loaning were deeds from almost innumerable parties claiming to be the heirs at law of James Walker and Ralph Walker, to your local representative, John H. Walter?

Mr. LAMAR: I except to the question—to the resume of
103 the abstract as being inaccurate and further because the abstract itself is the best evidence of what the same contains.

Mr. DARLINGTON: I object to the exception because the witness is a lawyer and the abstract is before him.

A. The abstract shows that George Walker took certain lots in the division between the original proprietors and the United States commissioners on October 13th, 1792, two mortgages from Walker; two assignments from Walker to different people and one deed of trust from Walker to Baker and Dawes, then a quit-claim from various parties to John Carroll Brent, trustee and then a deed from various parties describing themselves as the sole heirs at law of James Walker, to John H. Walter.

Q. And then a deed to John H. Walter from innumerable other parties claiming to be some of the heirs at law of Ralph Walker, does it not? A. Number 16 of the abstract is a deed from various parties described as among the heirs of Ralph Walker to John H. Walter.

Q. What showing did you find in that abstract as to who James Walker and Ralph Walker were and what title was passing under those conveyances? A. That is a question of opinion—the best answer to that is I found in the abstract such certificate of title as I reported upon in a letter to Walter H. Acker in connection with the application for a loan to Bradshaw.

Q. Once more I ask you, as a lawyer who has stated that he is acquainted with this abstract, to examine it and point out to us what title from George Walker to James Walker and Ralph Walker, this abstract shows? A. I can't pretend off-hand to answer that question—I can't give a legal opinion.

Q. Please take your time and answer that question and say what title you thought you were getting, the abstract showing that
104 the title began with George Walker in 1792. A. I accepted the certificate of Walter H. Acker of October 30th, 1893, as correct in regard to the title with respect to which it was drawn.

—. Did you fail to notice that that certificate stated in terms that he had not verified Aughinbaugh's certificate of title. A. I noticed the exact wording of that certificate and required the final certificate as supplementary to and as making satisfactory to us the title in question—the final certificate of November 1st., 1893.

Q. Will you not plainly tell us how it was that you the general attorney of the association, making a large loan and requiring the borrower to furnish you with a clear certificate or abstract of title to the property, permitted this loan to be made, when the chain of title furnished you, utterly fails to show any record title in the person to whom you were loaning? A. Whether it fails is a legal conclusion upon what it shows.

Q. Then I ask you to take the abstract which shows the title in George Walker, more than a century before you made your loan and say what title passed to you and your co-trustee in the deed of trust or how it passed to Bradshaw to whom you made the loan? A. I decline to make any such statement unless such statement is requested in writing, or to give an opinion on a legal document unless the papers are all submitted and time given to investigate fully; this is not a question of fact but a legal opinion.

Q. You found in that abstract that the record title was in George Walker in 1792, did you not. A. I must decline to give any legal opinion.

Q. Please look at the bottom of the first page of the abstract
105 and state if it does not distinctly appear, without any investigation, that the record title was in George Walker, in 1792.

A. Any opinion on a part involves the whole, which opinion I am willing to give if all the papers are submitted to me and I am given opportunity to investigate them.

Q. What do you mean by all the papers? A. That is all the correspondence in connection with the same and forwarded with the same to the attorney. Abstracts of title are frequently explained by correspondence which accompanies them or is filed with them.

Q. You have stated, Mr. Kennard, that you have no interest in this suit? A. I have none.

Q. State why you hesitate to state that on the first page of that abstract it is stated as a fact that George Walker held the title to this property in 1792? A. Because like any careful attorney I hesitate to give an opinion on a subject testified to as a fact when it is really a legal opinion.

Q. Do you state as a disinterested witness who is supposed to be entirely frank and fair that you cannot take the first page of this abstract of title and tell us whether or not it shows upon its face that George Walker held the record title to this property in 1792?

Mr. LAMAR: Counsel objects to the question because it has already been answered and because the present cross-examination is not with respect to a fact but a conclusion of law in regard to a transaction closed years before and is not proper cross-examination.

A. I state that I consider the abstract as a single document, in regard to which I am willing to give any opinion requested by
106 counsel, after what I consider proper opportunity and time for investigation has been afforded and will not undertake to answer a question involving my legal opinion of any particular part of the abstract.

Q. You have stated that your association acted in good faith and without suspicion of complicity on the part of anybody—how did you explain it to yourself, or how was it explained to you that this property had stood for more than a hundred years without transfer or devolution of title other than these conveyances made to your agent John H. Walter?

Mr. LAMAR: I object to that question because it does not comport with the facts shown by the abstract itself—the abstract does show conveyances from John H. Walter and from other parties subsequent to the time at which the same was conveyed to John H. Walter.

Mr. DARLINGTON: I beg to state that the witness is a lawyer and quite able to take care of himself without objections from counsel; I think they are hardly proper to be offered under the circumstances. The conveyances mentioned by counsel are subsequent to the ones to which I have referred.

A. I cannot undertake to reproduce the mental processes by which any particular conclusion was arrived at, at a period of time as remote as whe- this abstract of title was under consideration, but can give, if afforded opportunity for consideration of the entire subject matter, approximately the ground for the conclusion reached in regard to the sufficiency of the abstract of title.

Q. Do you suggest an adjournment in order that you may have

time to continue this examination? A. In regard to all matters of fact I think I can give answers; in regard to a legal opinion I prefer to have the question submitted in writing, with such opportunity afforded as may be necessary to enable me to properly investigate and answer in kind.

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Q. I am not asking you for an opinion; I am asking you whether the abstract of title which you produced, and upon which you acted, shows that for a century the title to the property had been lying without any change? A. You ask me its significance, which I consider a conclusion and not a fact.

Q. Well, you saw the fact, did you not when you examined this abstract, that from the time of George Walker, in 1792, until these comparatively recent conveyances to John H. Walter, your agent, there had been no transfer of the title of this property? A. Transfer of title, as I understand it, is the result of an accurate compliance of provisions of law on prescribed forms necessary to accomplish that object and whether a particular instrument purporting to be a transfer of title be a transfer or not depends upon the considerations heretofore stated.

Q. If this is the most direct answer I can get I pass on to something else. As a lawyer, you know what the term "Dismissed without prejudice" means, do you not? A. I have an impression.

Q. What is that impression? A. My impression is that it means that the parties to an action are in nowise interfered with in the relations which existed prior to the bringing of the suit, but so far as the bringing of the suit itself and the entry of that fact on the records of the court are concerned, the dismissal of the suit vacates such lien as the suit would be and relieves the property upon which it would be a lien during the continuance of the suit from the effect of such lien, but this is my impression, not made as a statement of the law.

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Q. In other words, it terminated the suit without finally adjudicating the rights of the parties, leaving the complainants with the right to bring another suit? A. Yes, but it eliminated the lien of such suit.

Q. Then, when this abstract advised you that the Ashleys had this equity suit against John H. Walter, claiming to be the owners of the property, and the certificate of the District Title Insurance Company advised you that that suit had been dismissed without prejudice, you understood that the suit was terminated, removing such lien as it created, but that the court in terms provided that the parties might bring another suit, did you not?

Mr. LAMAR: Objected to, first, in that it undertakes to state what the witness has said he did not know—that he was familiar with the allegations contained in the bill of complaint in the equity cause of the Ashleys, and, second, because it calls for a conclusion of law and not for a fact.

A. So far as I can state at this distance of time what the conclusions produced on my mind by any particular statement of facts

were, I can only say that the probability is that the statement above made had that effect, but can't state absolutely what opinion was created in my mind by such statement.

Q. I only wish to know if it is not true that the Aughinbaugh certificate advises that the Ashleys were claiming title in this equity suit and that the District Title Insurance Company's certificate attached to it, and the Acker certificate both state that the suit had been dismissed but the dismissal was without prejudice? A. One page of the abstract states that the equity suit, No. 12318, Ashley *et al. vs.* Walter *et al.* was "dismissed for want of prosecution at complainant's cost, without prejudice."

109 Q. Mr. Kennard, what persons in the city of Washington, knew the post-office addresses of the New South Building and Loan Association, Mr. Armstrong and yourself, during the years 1893 and 1894, in so far as you know? A. Those who had business relations with us; I presume I can mention two or three people.

Q. Had any of the defendants in this suit had any correspondence with you or had they any knowledge of your address, so far as you know?

Mr. LAMAR: I object to the question because the witness has already stated that he had no correspondence with any of these defendants, in fact had no acquaintance with them.

A. I have no means of knowing that any of these persons (indicating the defendants to the bill) knew our address—I mean before this suit was brought—so far as I can now recollect.

Q. Upon whom were you relying for notice of any facts which would effect the security of your loan during the period you were advancing the different instalments. A. Walter H. Acker.

Q. Anybody else? A. Those persons who were signing the certificates indicating that the premises were—that the improvements upon the property were—at a stage which met the conditions upon which the loan was made, and whose names appear upon the certificates which were forwarded to us.

Q. You mean Bradshaw and his builder?

Mr. LAMAR: I object to that as irrelevant and immaterial.

A. We relied upon the following parties furnishing the same: F. M. Angelo, builder, John H. Walter and B. Stanley Simmons.

110 Q. You spoke of Mr. William F. Mattingly as the attorney employed by your association after the receipt of Acker's letter—what was Mr. Mattingly employed for? A. To look after the interests of the New South Building and Loan Association.

Q. In other words to defend this suit which Acker's letter informed you the Ashleys were maintaining against Bradshaw, asserting their title to this property? A. Yes, to the extent that this suit involved or endangered the interests of the New South.

Q. In addition to Mr. Mattingly did not Mr. Acker and Mr. William John Miller represent the association in this case? A. I am

not aware of any connection Mr. Miller had with the case; Mr. Mattingly was employed, as I stated, and Mr. Acker always looked after the interests of this company.

Q. Are you able to state that Mr. Miller did not represent your company? A. I have no recollection of it and find nothing to show that we had any correspondence with him in regard to it. He could not have been employed without my consent.

Q. How long did Mr. Mattingly continue to represent the association in this city? A. I will have to refresh my recollection. I can't tell unless you, (addressing Mr. Lamar), have something here showing.

Q. You have spoken *as* John H. Walter and B. Stanley Simmons as persons to whom you looked for notice of any facts affecting the interests of the association—what were the relations of these
111 persons to the association? A. One was the president and the other the local architect of the Washington branch.

Q. Who were the stockholders here? A. I can't tell off-hand, it would be shown by the books of the company; I didn't keep any of these records.

Q. Do you remember any of them? A. Mr. Acker at one time.

Q. And Mr. John H. Walter? A. Oh, yes, I think he was a stockholder; I can't swear without seeing the books. I know presidents of local boards had to be.

Q. Did the company accept the proposal in Mr. Acker's letter of having the property turned over to a trustee to collect the rents and thus retain Mr. Bradshaw's good offices in defending this suit? Q. My recollection is that the property was turned over under an agreement of some sort; I think the letter mentions that.

Mr. DARLINGTON: Yes.

WITNESS (continuing): If you will let me look at my reply I can tell you what we did. It was answered on the 14th of September, I think, (examines letter) I think that the reply stated that it would be submitted to the board of directors on the night of the 14th.

Q. Do you not know that the proposition was accepted and the rents collected by Mr. Acker for the association from that time on? A. My impression is that some agreement was made and that there was some collection of rents, but that no part of them ever reached us. I don't recollect that I ever saw the agreement. I think I would remember if I had seen it.

Q. What became of the rents during the three years which
112 elapsed between the date of Mr. Acker's letter of September 11, 1894, and your withdrawal from the presidency? A. I don't know; if anything was received by us it would go through the secretary of the company and be entered on the books.

Q. Do you know whether anything was received? A. I do not.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Darlington asked you whether or not John H. Walter was the agent of your association—state whether or not you regarded the president of the local board as the agent of the company.

Mr. DARLINGTON: I object to the question as being leading, incompetent and otherwise inadmissible.

A. No president of a local board was the agent of the company, nor was Mr. Walter ever regarded, so far as I know, as the agent of the association.

Q. Then you expected notice from him under his duties as a member of the local board?

Mr. DARLINGTON: Objected to as leading, argumentative and incompetent.

A. I expected such information as the terms of the loans required from him, and as shown in the certificate of the local board—such information as any president of a local board was required to give.

Q. Mr. Kennard, state whether or not you examined the contents of the instruments of record to which reference is made in the chain of title, or relied upon counsel for the local board to examine the records of such instrument?

Mr. DARLINGTON: Objected to as not being redirect and as being leading and incompetent.

A. We didn't examine the instruments referred to; we re-
113 lied upon local counsel to make such examination as would enable him to sign the certificate required by the association, which certificates are shown by Exhibit No. 4.

Q. Look at this instrument, purporting to be a power of attorney, from Aaron Bradshaw and wife to Walter H. Acker, and state whether or not you have ever seen it before. A. I am quite sure I never saw it before. I never read that before.

Mr. LAMAR: The paper is offered in evidence to be appropriately marked for identification.

NOTE.—And the same is filed by the examiner, marked "Exhibit W. W. M. No. 10."

Q. Was there any direct agreement between the association and Mr. Acker relative to the collection by him of the rents other than the information from said Acker, with regard to the execution by Bradshaw of the power of attorney under which the rents were to be collected by Acker, as the agent of Bradshaw?

Mr. DARLINGTON: I object to the question as assuming that the power of attorney made Acker the agent of Bradshaw.

A. Not that I know of.

Q. As a matter of fact did your association take any other steps at

the time of the receipt of Mr. Acker's letter than merely to decide to retain counsel at the proper time and abstain from foreclosing? A. I don't think I can make it plain in a word—I can answer it in this way—not that I know of except that I know that counsel was eventually employed by the company, said counsel being Mr. Willi-m F. Mattingly.

Q. Did you proceed to foreclose in September 1894?

114 A. No.

Q. Or at any time subsequent thereto? A. No; not within the period of my management.

115 JOHNSTON ARMSTRONG.

Direct examination.

By Mr. LEE:

Q. Please state your name and residence? A. Johnston Armstrong; residence New Orleans La.

Q. You are a citizen of the United States? A. Yes, sir.

Q. You are the complainant in this case and the receiver of the New South Building Association? A. Yes, sir.

Q. Of New Orleans, La. A. Yes, sir.

Q. And ancillary receiver for the District of Columbia? A. Yes, sir.

Q. You are the person mentioned in the deed of trust attached to the bill of complaint in this cause as Exhibit C? A. Yes, sir.

Q. What was your connection with the New South Build-

116 ing and Loan Association, prior to being made receiver? A. In 1893 I was assistant attorney of the New South Building and Loan Association and in 1899 I was appointed receiver.

Q. At the time of the making of the trust from Bradshaw, referred to in the bill of complaint? A. I was the assistant attorney.

Q. And a resident of New Orleans? A. Yes, sir.

Mr. LEE: I offer in evidence Exhibit C to the bill of complaint, being a deed of trust from Aaron Bradshaw and wife to Kennard and Armstrong trustees, made on the 28th. day of October, 1893 and recorded October 30th., 1893, in Liber 1860, at folio 324, *et seq.*, of the land records of the District of Columbia.

NOTE.—The said paper which is a part of the record as Exhibit C to the original bill is filed in evidence by the examiner.

Mr. DARLINGTON: I object to this paper as being irrelevant and immaterial as against the defendants to this suit and a matter with which they have no concern.

Q. State your personal connection with the loan to Aaron Bradshaw?

Mr. DARLINGTON: I object to this question and to any answer which shall be given to it, on the ground that the loan and transactions between Bradshaw, the building association, its agents and

representatives, are *res inter alios acta* and incompetent, irrelevant, immaterial and inadmissible against the defendants.

NOTE.—It is agreed between counsel that the foregoing objection of Mr. Darlington, shall apply to all similar questions and answers and to all testimony of every kind, either parol or documentary concerning the transaction between the association and Bradshaw as if repeated in each instance.

117 A. As assistant attorney of the association at the time the loan to Bradshaw was made, it was my personal duty to examine all papers which were made out in connection with the loan and to send forward the documents necessary to complete the loan which were, in this instance, made out in my own handwriting.

Q. When you refer to papers made out in connection with the loan, you mean papers made out in your office. A. Yes, sir; I mean all papers in connection with the loan, the deed of trust, the bond to secure the debt, the certificates from the local board, the builder's receipts and all other papers necessary to legally secure the advance; to examine these papers when returned and see that the instructions of the board and the general attorney were carried out.

Q. I will ask you to examine this paper which is headed "Bond," and is dated the 28th day of October, 1893—and purports to be signed by Aaron Bradshaw—who prepared it? (Handing witness paper.) A. That paper, all except the date, 28th of October, and the signature at the bottom, is made out in my handwriting and was the bond that was sent forward in connection with the loan of $20,000.00 and returned to the association.

Mr. LEE: I now offer the above-described paper in evidence.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 11."

Q. Please explain why the amount mentioned on the face of the bond is different from the amount mentioned on the back—twenty thousand dollars on the back and forty thousand dollars in the body of the bond? A. This is a penal bond in the sum of twice
118 the amount of the loan, and it was customary to make the bond twice the actual sum advanced. It was indorsed twenty thousand dollars because it represented that amount of security and when forwarded to the trust company as shown by the type-written indorsement, it was sent only as a twenty thousand dollar bond.

Q. Please explain that type-written endorsement on the back of the bond. A. That endorsement was put on the back of this bond, because under the laws of Georgia all building and loan associations operating in Georgia, but not domiciled there, known as foreign building and loan associations, were required to deposit three-fourths of all their securities with the trust company, in order to do business in Georgia. This endorsement is made to carry out the provisions of that law.

Q. The bond was afterwards returned to you as receiver? A. I

cannot state positively whether that bond was returned to me before the date of my receivership or after the date of it. I know I found it among the papers and other securities of the association, but frequently, from time to time, out of the remaining one-fourth of our securities which we were allowed to keep on hand under the Georgia statute—we would have securities which were in the hands of the trust company returned to us upon placing with them an equal amount of securities. We were also allowed to withdraw bonds of that kind for the purpose of suit I don't remember whether it was sent over expressly to begin the suit against Bradshaw or whether it was returned to me afterwards.

Q. In brief, this is one of your receivership assets and the trust company has no interest in it? A. None at all. There was a decision of the United States court, Judge Shelby, in which
119 they were required to turn over everything to me as receiver.

Q. Has the loan secured by the original deed of trust ever been satisfied? A. No, sir.

Q. What advances were made to Mr. Bradshaw under or by reason of the trust? A. Twenty thousand dollars were advanced to him under the provisions of that deed.

Q. Will you give the details of these advances? A. The amount of twenty thousand dollars was embraced in five checks in denominations as follows:—First, four thousand dollars; second, three thousand dollars; third, four thousand dollars; fourth, two thousand dollars; fifth, seven thousand dollars.

Q. Covering what period were these checks sent? A. The first check was sent by me November 13, 1893.

Q. To whom sent? A. To Walter H. Acker, the attorney for the local board, and the last check was sent March 20, 1894. The others were sent at varying times between those dates. I can refer to the papers, if you wish, and give you the exact dates.

Q. How were these checks drawn? A. They were drawn to the order of Aaron Bradshaw.

Q. These advances were made according to some definite plan? A. Well, the advances were made to pay for the buildings as they progressed, according to the plan of all building and loan associations. With the first letter of instructions statement was made——

Mr. DARLINGTON: I object to any statement accompanying any letter of instructions.

120 WITNESS: I think it is evidence.

Mr. DARLINGTON: Then it must speak for itself.

WITNESS: All right, sir; it can speak for itself.

Q. You can say a letter was forwarded with the check. A. Yes, sir, a letter was forwarded with the check, giving the various——

Mr. DARLINGTON: I object to giving what the letter states.

Mr. LEE: The witness may say, "I refer to Exhibit 3, introduced by Mr. Kennard."

WITNESS: The letter of October 23, 1893, addressed to the local

attorney of the New South Building and Loan Association, with Walter H. Acker in green ink, Exhibit 3, this gives the details.

Q. These checks were all cashed by Aaron Bradshaw and returned to, you I presume, through your bank, what bank was that? A. The American National Bank of New Orleans.

Q. Where are the checks now? A. I left the checks with my attorneys Messrs. Blair Lee and George H. Lamar; the last time I was up here, with other papers. I have not seen them since.

Mr. DARLINGTON: I simply ask that these checks may be filed when found.

Q. Among the precautions taken on the part of your company was anything done in respect to mechanics' liens, as a preliminary precaution? A. Yes, the association required the applicant Aaron Bradshaw to give a bond, with sufficient sureties, against any liens from material men or mechanics.

Q. Is that the bond prepared in that case (showing witness a paper)? A. This is the bond. It was returned to me as executed.

121 Mr. LEE: We offer this paper in evidence. It is headed: "Security bond against lien of mechanics, etc., and is dated November 28, 1893.

NOTE.—And the same is filed by the examiner marked "Exhibit W. W. M. No. 12."

Q. Among the other formalities it was necessary, was it not, when a person desired a loan, to make application for stock? A. The association was allowed to lend only to its stockholders and anyone could make application upon his stock to borrow the value thereof.

Q. Can you identify these two papers? (Showing witness papers). A. I can identify this one, as an application for shares which was originally for 240, because the application was for twenty four thousand dollars. It was sent on and changed to two hundred shares when the application was approved for only twenty thousand dollars.

Mr. LEE: I offer in evidence this paper. It bears in the upper right corner "No. 7330," is dated Aug. 24, 1893, and is signed Aaron Bradshaw, and V. Brevard, agent.

NOTE.—And the same is filed by the examiner, marked "Exhibit W. W. M. No. 13"

Q. Mr. Armstrong, the deed of trust was given and recorded for the purpose of securing these advances before they were made?

Mr. DARLINGTON: I would suggest that the examination of this witness is becoming very near the verge of what is known among lawyers as leading.

A. No answer.

Q. Was there any default under the trust, and if so, please
122 state what it was? A. Yes, sir; default was made by Aaron Bradshaw in May, 1894; that was the last payment we re-

ceived from him. I fix this date, because I know that shortly after that time, in June of that year, I think, the matter was put in my hands for foreclosure.

Q. Was the sum paid or payable to the said Bradshaw set aside for that purpose, and if so by whom, where and when? A. The papers were sent forward, the deed and other papers, from New Orleans, to be executed; checks were drawn on that date for the twenty thousand dollars, in the instalments mentioned above, and he was charged with interest on the twenty thousand dollars from that date. The checks remained in the hands of the association under my care, it being my special duty to send on checks when vouchers were executed showing that the amount of the instalment was due under the terms of the loan.

Q. I understand then that the funds practically remained under your control?

Mr. DARLINGTON: I must object to this question as being altogether too leading.

Mr. LEE: I will put it the other way, then, In whose control did the checks representing the fund remain? A. The checks were in my control absolutely, because I was the only one that could send them forward and I didn't send them forward until the various steps required had been complied with.

Q. In the event of any irregularity or of the discovery of any defect in the title or fraud from the standpoint of the borrower, could you have stopped the delivery of the money or checks?

Mr. DARLINGTON: Objected to as leading hypothetical and calling to evidence of no fact; this in addition to the general objection.

A. Yes, I could have stopped the payment and would have done so on any information of fraud or misconduct being brought
123 to my knowledge, or any information of fraud or misconduct on the part of the borrower in connection with the loan.

Q. Under the circumstances, what would have been your conduct and duty, if any evidence was brought to your attention, indicating or suggesting a defect in the title?

Mr. DARLINGTON: I make the same objection.

A. I would have stopped payment of the check and reported the matter to the general attorney and the board of directors.

Q. At what time did the association become insolvent? A. June 3rd., 1899, it was placed in my hands as receiver.

Q. What proceedings, if any were taken to foreclosure or for a sale under the trust from Bradshaw? A. When Bradshaw had defaulted in his payments in the summer of 1894, as stated above, the general attorney of the association, Mr. Kennard, instructed me to take up the matter of foreclosing the loan. The foreclosure of all loans was in my hands. On June 29th., 1894, I wrote to Mr. Acker, as this letter shows, (referring to letter) asking him to co-operate with me in foreclosing the loan.

Q. Please state how this letter came into your possession? A. I got that letter from Mr. Acker yesterday. I had a carbon copy of it and went to his office and got that one.

Mr. Lee: We offer that letter in evidence, the same being a typewritter letter dated New Orleans La., June 29th., 1894, addressed to W. H. Acker, Esq., 704, 14th. street N. W., Washington, D. C., and signed by J. Armstrong assistant attorney.

Note.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 14."

Witness (continuing): Subsequently there was some cor-
124 respondence, to which I have my answers, showing as to the terms of the sale and finally advertisement of the sale was sent on to be signed by both trustees—sent on by Mr. Acker to New Orleans, to be signed by the two trustees, Mr. Kennard and myself—to be returned to him for action. This document is the one sent and the lower signature is mine (indicating Exhibit No. 8) That was returned to Mr. Acker in a letter of August 16th., 1894. I have that letter in my hand. Subsequently, before the day of these sales, a telegram from the association to Mr. Acker was forwarded and also a letter to Mr. Acker, the telegram being dated August 25th. and the letter August 27th., 1894, which will show the steps taken by the association towards advertising the property securing the association under the deed of trust.

Mr. Lee: I now offer in evidence letter dated New Orleans, La., August 8th., 1894, addressed to W. H. Acker, Esq., 704, 14th. street, N. W., Washington, D. C., and signed by J. Armstrong; also letter dated New Orleans La., August 16, 1894, addressed to Walter H. Acker Esq., 704, 14th street, N. W., Washington D. C., signed J. Armstrong, assistant attorney; also telegram dated New Orleans, La., August 25th, 189– to W. H. Acker 704, 14th. St., N. W., Wash'n, signed New South Building & Loan Ass'n; also letter dated New Orleans, La., August 27th., 1894, addresses to W. H. Acker, Esq., 704, 14th. street, N. W., Washington, D. C., signed New South Building and Loan Association.

Note.—And the said letters, three in number and said telegram attached together, are filed by the examiner and marked "Exhibit W. W. M. No. 15

Witness (continuing): After these letters were sent on, we received a letter from Mr. *Mr.* Acker, which was that letter, Exhibit No. 9 under which the foreclosure proceedings were stayed.

Q. In the bill of complaint, you enumerate certain ejectment suits, instituted to try the title to the land, upon which the trust is secured—when did you first learn of the pendency of any or
125 all of these ejectment suits? A. After the date of these letters, I think it was September 11th., 1894: the first information received was in this letter from Mr. Acker of September 11th., which has already been offered in evidence—the first information received concerning the ejectment suits.

Q. Had you had any trouble before this in respect to titles upon which your loans were made?

Mr. DARLINGTON: This question, in addition to the general objection, is objected to as being without relevancy or admissibility as against these defendants.

A. The association had never had any trouble about an error in title up to the time of this Aaron Bradshaw abstract and in the hundreds of loans which passed under my hands and have passed through my hands as receiver, there has never been any objection as to the title of any piece of property that we have foreclosed.

Q. When did you first see the power of attorney to Acker, referred to? A. I saw the power of attorney which was offered last night, I think. Exhibit No. 10 (looks at power of attorney) I first saw this power of attorney last summer when I came on to the District of Columbia.

Q. Did you, or did the association, as far as you know ever expressly authorize or direct the giving of that power of attorney? A. Not so far as I know.

Q. Can you say what effect the giving of that power of attorney had upon the action of the association in respect to a sale or foreclosure under the deed of trust? A. We refrained from foreclosing under the deed of trust, on account of the placing, as we
126 understood it, of the property in the hands of a trustee.

Q. Was there any agreement or understanding between the association and Bradshaw, as to how long you should refrain or upon what terms, from foreclosing or having a sale under the deed of trust? A. Not that I know of; there had been no definite time fixed; I know that we thought that it was inadvisable to foreclose when there was a serious litigation pending, as there would be no purchaser for the property.

Q. Can you give the cause of and time when the association became insolvent? A. I have stated the time above as June 3rd, 1899; the cause of the insolvency was an adverse decision of the supreme court of Mississippi, to the interests of the association, holding that our loans could not be enforced in that State and we had nearly a quarter of a million dollars invested in Mississippi, and were unable to continue business in the face of that adverse decision.

Q. Can you state the number and general location of the stockholders in the association? A. I can state in general terms that there were over three thousand stockholders in the association, located in nearly all of the Southern States, from Virginia to Florida and Louisiana; they were widely scattered all over the South.

Q. Can you state whether the association made this loan to Bradshaw in good faith and without notice of the pendency of any ejectment suit? A. Yes, sir; positively in good faith and without any notice. I know of this because of the extreme care they tried to take with other loans and especially with this one, because it involved a large amount.

Q. What was the relationship between any local board,
127 such as the local board of Washington, and its officers and the New South Building and Loan Association, in respect to the authority of such local board or its officers?

Mr. DARLINGTON: Objected to as calling not for any fact but for a conclusion, and notice is given that I shall object at the hearing to the reading of any answer to this question on such ground.

A. The officers of the local board were not, according to our by laws, the agents of the association, nor were they so regarded at the home office. The authority of the local board was advisory only, and it could not bind the association without action by the home office in New Orleans.

Q. Who was Mr. Walter H. Acker and what was his relationship to the application for or money furnished by the association in this instance? A. Mr. Walter H. Acker was the attorney for the local board; he succeeded Mr. W. E. Aughinbaugh in that office and all the papers were completed under his care and checks were forwarded to him to be delivered.

Q. Who was Mr. Walter? A. I have no personal knowledge as to who Mr. Walter was; I know only from documents submitted to me, but I do not know his signature, so I could not say.

Q. Was he a member of the local board? A. That would be merely hearsay; I could not testify as to who Mr. Walter was; I never knew Mr. Walter.

Q. Did either Mr. Bradshaw or Mr. Walter or Mr. Aughinbaugh, before the consummation of the loan and the delivery of the money, bring to the attention of the association, the fact that any suit—that any ejectment suits were pending with respect to the title or
titles to the land on which the trust was given, and if they
128 did at what time did they do so? A. Neither one of the three mentioned gave us any notice of the ejectment suits before the date of the loan in question, for if they had the loan would not have been made.

Q. State whether or not, prior to the making of the loan and the payment of the last instalment thereof, you ever read or knew the contentents of the bill or other pleadings in equity cause No. 12,318 in the supreme court of the District of Columbia, entitled Nehemiah B. Ashley *et.* — *vs.* John H. Walter *et al.*? A. No; I never read it, or knew the contents of the bill or case to which you refer at any time. By way of explanation, I would say that it was no part of my duty to examine the abstract of title after the general attorney of the association had instructed me to draw up the papers and I do not recall that I examined this one.

Q. Were you in a position to know whether the board of directors of the association had a suggestion in respect to the title above referred to brought to their attention at any time prior to the making of the loan? A. I was in position to know whether the board of directors had any information, because I was required to be at the meetings of the board of directors to give any information about

which they desired to inquire and I know that they never had any information concerning this suit.

Q. In the hands of what officer of your association did the abstract or chain of title Exhibit No. 4 come, and the information which it conveyed? A. The abstract of title Exhibit 4 in this case, passed through the hands of Mr. John H. Kennard, the general attorney of the company, who examined abstracts of titles to land outside of Louisiana.

129 Q. Is your personal address and the address of the association set forth cor-ectly in the deed of trust? A. Yes; the address of the association and my address, New Orleans, La., is correct.

Q. Would a letter addressed to you or the association, simply New Orleans, La., have reached you? A. Yes, I get them that way every day.

Q. Were any estimates made as to the value of the property upon which this loan was placed and if so by whom? A. There were special appraisers to examine into the values of all property offered the association as security and there were special appraisers to examine this property under consideration; their names—I do not recall the initials—were Videtto and Sprigg.

Q. Do you find any report on the subject? A. I have looked among the papers; I know it was among them but I do not find these reports; I think they have followed the way of the checks.

Q. I hand you a letter addressed to the New South Building and Loan Association, New Orleans La., dated August 29th, 1893 and signed by B. Stanley Simmons—state whether or not that was received by you and if so, when and how. A. This letter was received by the association and was examined by me as being one of the vouchers required in order to complete the loan.

Mr. Lee: We offer this letter in evidence.

Note.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 16."

Witness (continuing): In explanation of my statement that this letter of B. Stanley Simmons is called a voucher, I would say that the first certificate required that $3,030.00 worth of material should be furnished before the association advanced any money to build the houses on 9th street, in controversy and in the local board's

130 first certificate, you will find this amount referred to.

Q. I also show you Exhibit 6, consisting of five certificates, introduced at the last hearing and would like to have you state whether or not those papers were also examined by you, prior to the forwarding of the various instalments as the buildings progressed? A. I stated in the first part of my examination, that my duty as assistant attorney, was to see that the requirements of the board were strictly carried out and the documents I have in my hand, marked Exhibit 6 were examined by me carefully and I required certificate number 1 to be executed before the first check was forwarded; on receiving that certificate, the first check for $4,000.00

was forwarded. I required certificate number 2 to be properly executed and to be presented before the second check was forwarded; certificate No. 3 to be properly executed before the third check was forwarded; certificate number 4 to be properly executed before the fourth check was forwarded and certificate number five before the last check was forwarded. In looking through these certificates, I find that one of them is changed from "V" roman notation to "IV," with pencil; the addition of "I" before the "V.," and I see that one certificate is missing. I do not know where the missing certificate is, but I would state positively that the certificate showing the expenditure of the amount which would be indicated by certificate four, to wit: $11,970, was examined before the check was forwarded; I had it in my hand; I do not know where it is now.

Q. State whether or not, the next subsequent certificate would constitute a verification of the one which you say is missing, to the extent of adding in the certificate the amount of the expenditure necessary to be covered by the lost certificate? A. Yes; cer-
131 tificate number 4 would have shown $11,970.00 expended and certificate number five shows the receipt of $11,970.00 previous to that certificate being executed.

A. I show you Exhibit 7, headed "Affidavit of contractor" and ask you to state whether or not you have seen that before, and if so, was the same examined prior to the making of the last payment,—I mean the turning over of the last instalment? A. This was not received prior to the turning over of the last instalment, but it was sent to the home office after the last instalment had been sent, and showed the payment.

Q. What were the requirements of the association as to titles before making loans? A. The association required, in every instance, a complete abstract of title, showing all conveyances, mortgages judgments and other proceedings affecting the title, and an abstract of title in Louisiana, means a document which will show everything necessary to enable a lawyer to decide whether the title is good or not and whether there are any incumbrances upon the property.

Q. Are there any title companies in Louisiana? A. There are no title companies in Louisiana; titles there are examined by lawyers and they certify as to the title.

Q. The by laws which I hold in my hand provide that an abstract of title must accompany the application for loan. See article six, section three thereof as follows "An abstract of the title to the property offered as security for a loan, must accompany the application." Was any letter or notice or warning of any kind ever received by or on behalf of the association in New Orleans from the defendants in this suit or any of them? A. No sir.

Q. Or on behalf of any of them advising the association of the state of the title referred to, or claiming an interest in the real estate upon which the loan referred to was made and was
132 being expended? A. No; if it had been the loan would not have been made or the instalments would have been stopped.

Cross-examination.

By Mr. DARLINGTON:

Q. Do we understand that you were relying upon the defendants to give you some advise as to the title of this property? A. No, we were not relying upon the defendants to give us advice, because we knew nothing about the suits concerning it. We wish they had given us advice.

Q. I would be glad if you would turn to the by law, if you have one, under which you expected advice from the defendants. A. There is no by law of the association under which we would expect defendants to give us notice, inasmuch as the by laws are made to regulate the affairs of the association with stockholders and not with strangers; so there is no by law on that subject.

Q. These defendants were strangers to you were they? A. Yes, sir.

Q. And you to them? A. Yes, sir.

Q. They had never heard of you so far as you know? A. Unless the notice of our trust deed recorded here, and I believe published in the newspapers, gave them notice. *gave them notice.*

Q. What makes you say published in the newspapers? A. I was so informed.

Q. As a lawyer you know that hearsay testimony is not admissible? A. Yes, sir.

Mr. DARLINGTON: I object to the answer and move to strike it out.
Mr. LAMAR: His answer is responsive to the question.

Q. Upon whom did you rely for the protection of your interest, the security of your loan and such notice as was important
133 for you to have? A. We relied upon the abstract of title to show the incumbrances, and whatever information there should be with reference to the title to the property.

Q. Do we understand that you relied exclusively upon the abstract? A. My answer will have to be divided into two parts: for all information necessary to form an opinion whether the title was good or not, we relied upon the abstract as furnished, taking that in good faith always; and for information as to whether the requirements of the home office as to the various instalments which we sent forward from month to month as the work progressed, we relied upon the certificates sent by the local architect, the president of the local board, the attorney for the local board and the builder's receipt to show that the money had been received by him.

Q. Who was the president of the local board? A. From the document submitted to me, a man by the name of John H. Walter.

Q. Who was the local attorney? A. Walter H. Acker at the time the loan was completed, was attorney for the local board.

Q. You don't have any doubt that John H. Walter was the president of the local board. A. No, sir; but I stated in my examination in chief that I didn't know the man, but I have no doubt at all that he was the president.

Q. Did you know any of the parties? A. Yes.
Q. When? A. After the loan was completed.
Q. But we are talking of the time of the loan? A. No sir; I didn't know any of them.

134 Q. So that up to the time that you made the advance of the last installment of this loan you knew Mr. Walter precisely the way you knew all of the other parties? A. Yes, sir.

Q. I believe, Mr. Armstrong, you had been a lawyer for some six or seven years before this loan was made? A. About; yes, sir.

Q. You have testified that it was your personal duty to examine all papers connected with the loan? A. If I testified as generally as that, I would prefer to explain. I had nothing to do with abstracts for property situated outside of Louisiana. When I stated that it was my duty to examine all papers I would say that it was my duty to draw up, or see that they were properly drawn up, deeds of trust, notes, or other evidences of indebtedness, and see that the local board certificates or builder's receipts were drawn up in accordance with the requirements of the board of directors and examine those papers when they came up, but it was not my duty, nor did I have any connection with abstracts of title to land outside of Louisiana.

Q. Was there any officer of your association who was charged by it with the duty of examining abstracts of titles outside of Louisiana? A. Yes, sir; the general attorney.

Q. He was the head of the legal department? A. Yes, sir.

Q. Was it anybody else's duty to examine or discuss abstracts? A. No sir; not for property outside of Louisiana.

Q. That matter rested exclusively with him? A. Yes, sir.

135 Q. So that you don't remember, at any time, either yourself, or any other officer of the association, except the general attorney, having to do with abstracts of titles to property outside of Louisiana?

Mr. LAMAR: You mean before this loan, do you not?
Mr. DARLINGTON: I say up to the time of this loan.

A. No; the general attorney had control of all abstracts and examination of them, relating to property outside of Louisiana.

Q. Then there is nothing extraordinary about your statement in chief, that you never heard the board of directors discuss this equity suit which is shown in the abstract? A. No; there is nothing extraordinary in it, but at one time there was a loan applied for on a piece of property where the title was not, in my opinion, perfect——

Q. That was outside of Louisiana? A. It was in Louisiana, and as there was a small defect it was submitted to the board of directors whether the defect was sufficient to prevent us from making the loan. That was done in that one case but I do not recall any others where the title was submitted to the board of directors.

Q. So that the exception proving the rule, the board of directors had nothing to do with the discussion of the question of title?

Mr. LAMAR: We object to that, in that it does not appear that that was an exception, or that there was any other act than this particular one which occurred during the conduct of the association.

A. It was an exception, because it was the only time in the history of the association that an abstract was ever accepted in which there was even the slightest appearance of a defect.

136 Q. Then it was also the only case in which the board of directors was called upon to pass upon a title? A. Yes, sir.

Q. How did you get hold of Mr. Sprigg as the appraiser of this property? A. He was a personal friend of Mr. Kennard.

Q. How did you get hold of Mr. Simmons to make an estimate of the cost of the proposed improvement? A. He was a stockholder of the association here and one of the members of the local board of directors.

Q. What did that have to do with his giving you an appraisement or estimate? A. He was required under the terms of the resolution approving the loan to prove the cost of the construction, to see that the buildings on the property cost as much as it was stated to us they would cost.

Q. Who was required to prove that? A. Mr. Simmons.

Q. And by whom was he so required. A. By the home board at New Orleans.

Q. How did the home board come to select Mr. Simmons. A. He was selected by the members here, because he was a stockholder and an architect.

Q. How many stockholders did you have in the District of Columbia. A. I could not answer that off-hand—I think we had about—it would be entirely guess work. I know we had about a dozen, as far as my recollection serves me.

137 Q. Do I understand that no one of these dozen stockholders gave you any notice of these suits? A. We received no notice of the ejectment suits from anybody.

Q. These stockholders knew more about you than you expected strangers to know? A. I think that is an opinion?

Q. Have you any doubt about it? A. I would consider that people who are interested in a law suit, would know more about what was going on their property, than the shareholders of the association. They could not know where we were making our loans, unless they happened to be the president of the local board or the supervising architect or the local attorney.

Q. Well, wouldn't these three individuals know a little more about you and your loans than these seven defendants, six of whom were non-residents? A. Question not answered.

Q. In the Exhibit No. —, I notice that V. Brevard, appears as your agent—he knew your address, didn't he? A. Yes, sir.

Q. And he knew of this loan, didn't he? A. Yes, sir.

Q. How long did he continue to be your agent? A. I could not say.

Q. Who succeeded him? A. No one succeeded him here; after we found out the trouble into which we had gotten, the board went to pieces.

Q. Did this man continue to be your agent until the board went to pieces? A. I could not answer as to when he ceased being the agent of the company without reference to correspondence
138 which I did not bring with me, and I do not know how long he continued to be the agent. My impression is that he organized an association or was employed by some local association and quit us.

Q. Did he continue to be your local agent after your local board was organized? A. I think so.

Q. Wasn't he succeeded by the local board? A. No sir; by no manner of means.

Q. What did he do that the local board did not do. A. He was sent out from the home office and was the local agent of the company. He had no authority to approve applications for loans.

Q. Had the local board? A. They were required to approve them.

Q. Required by what? A. By the by laws.

Q. Will you give us that by law? A. I will furnish the article and section—section three of article eight of the by laws, which reads as follows: "It shall be the duty of the local boards to pass on all applications for loans which are received by the association from "members residing in the town in which such local board is located "and to protect the interests of the association in all practicable "ways."

Q. I observe from this by-law that one of the duties of the local board is to "protect the interests of the association in all practicable ways." That is correct, isn't it? A. Yes, sir.

Q. It is another of its duties to pass on all applications for
139 loans from its members, that is correct? A. Yes, sir.

Q. Was their action in that respect final or merely advisory? A. Advisory.

Q. I observe from section one of article eight that the local board had to be approved by the board of the home office. A. Yes, sir; that is correct.

Q. I also see from section eight of article eight that every application for a loan coming through the local board must have been approved by a majority of that board. Is that correct? A. Yes, sir.

Q. So that these were in general the functions of the local board, including the duty of protecting the interests of the association in all practicable ways? A. Yes, sir.

Q. You state that your association loaned only to stockholders, why was that? A. It was one of the charter obligations.

Q. Why was it so? A. I cannot say.

Q. You don't know? A. I do not know, except that it is the custom among all building associations to loan only to their members, and I do not think we would have been protected under the laws of the State, concerning building and loan associations, had we loaned to persons not our members.

Q. Do you know of any other reason? A. No, sir.

Q. In your letter of August 8 to Mr. Acker I observe that you propose the foreclosure sale should be upon terms of all cash, and that you assign as a reason your unwillingness to be tied up at six
140 per cent. interest without increasing your holding of stock. In the light of that letter, cannot you give us some other reason why you loan only to stockholders?

Mr. LAMAR: We object to this line of inquiry as not being relevant to the issues involved in this case, involving, as it does, the equitable claim for the value of the improvements on the land in controversy, as erected by money of the association.

A. It was for the benefit of the association that they should have shareholders and increase the influence of the association and it was a charter obligation.

Q. Isn't the plain English of it Mr. Armstrong, that you got more money out of stockholders than out of a mere borrower? A. I think so.

Q. You got fines and penalties, etc.? A. Yes, sir.

Q. That was real reason wasn't it? A. The real reason was that our charter didn't allow it.

Q. That is why you had that kind of a charter? A. I can't say; the inference you can make yourself.

Q. Do I understand that you drew all of these checks and dated them on the day that the loan was authorized? A. Personally I did not draw the checks.

Q. I mean your association. A. Yes, sir on the day the loan papers were sent forward.

Q. Although you knew the money would not be payable for months? A. Yes, sir.

Q. What was the object of that? A. That we might get
141 interest on the full amount of the loan from the time the papers were sent forward.

Q. Your object was that you might get interest for the time the other man didn't have the money? A. The money was subject to his order as the buildings progressed.

Q. But your association well understood, did it not, that the buildings could not be completed for weeks or months after the day the loan was approved? A. Yes, sir.

Q. And the object of holding these checks, drawn, for months prior to the completion of the houses was in order that the association might charge the borrower with interest on the money, which he didn't receive and could not receive for a considerable time in the future—isn't that true?

Mr. LAMAR: I object to that question as being irrelevant.

A. No; not entirely, because it was necessary for us to be in position at any time, to send forward the money, upon the demand of the borrower, after his deed of trust and other papers were of record, and it would have been impossible for us to regulate the business or

to know how our bank account stood, unless all of the checks were drawn at the time the papers to complete the loan were sent forward. Frequently, where the loan was delayed, long, in completion, interest was remitted.

Q. That was done in this case? A. Yes, sir; it was done in this case?

Q. How much was remitted in this case? A. I do not remember the figures exactly.

Mr. DARLINGTON: Then I object to the testimony as being indefinite.

WITNESS: I can furnish it.

Mr. DARLINGTON: We shall be glad to have it if this case ever reaches a stage where it is important.

142 WITNESS: I will agree to furnish the figures.

Q. For the present, please tell us why drawing the checks for months in the advance of the time when you knew they could be used, helped you to keep your bank account straight? A. We were obliged to be in such position, as far as our bank account was concerned, that we could at any moment send forward a check if the proper vouchers showing the expenditure of the previous check was sent to us *us*, and this we could not have done, if we were subject to having the checks drawn called for at any moment, when there would be sometimes twenty-five or thirty loans in course of completion.

Q. You drew all your checks this same way, didn't you? A. Yes, sir. We drew checks that way for the full amount of the loan, whether it was payable in instalments or all at once.

Q. What I cannot get through my head is, why that plan of business, applicable to all loans helped you keep your bank account straight? A. It would have been a very serious thing if we had drawn only a portion of the checks and on the same day certificates showing as much as twenty thousand dollars of checks had to be forwarded, if we had then to draw them out of bank. We had to have in bank, the aggregate amount of all loans in course of completion, in order to be safe.

Q. Mr. Armstrong, you are not willing to testify are —, that you always kept in bank the full amount of all loans you had undertaken to make although you knew those loans would not be called for for months? A. I am willing to testify, and able to testify, that we always had in bank the amount of the checks for which loans were drawn, or had made arrangements that these checks should be met.

143 Q. You had a regular monthly income from your stockholders, didn't you? A. Yes, sir.

Q. And you were able to compute with reasonable accuracy what your income would be—how much money you would have available in the future? A. Yes, sir; with reasonable accuracy.

Q. You have referred to a Mississippi decision which resulted in the receivership—that decision was to the effect that your scheme

was obnoxious to the usury laws? A. Of Mississippi, yes, sir; it was the case of Sodolaski *vs.* New South Building and Loan Association, reported in Mississippi Supreme Court Reports; but this ruling of the supreme court of Mississippi, has been changed — the United States circuit court, in the case of Miles *vs.* New South Building and Loan Association, reported in the Federal Reporter,—volume and page I cannot give you now, but I will send it to you before I sign this deposition.

Q. In how many instances, did evidences of fraud come to your notice and lead to the stopping of advances? A. There was one case in Mississippi and one in the city of Troy, Alabama, where evidences of fraud came to our notice and the loans were stopped.

Q. What were these cases? A. I couldn't undertake to give the names of them.

Q. Either of them? A. I could not give the names; I simply remember the occurrences; I believe that by research, considerable research I could get these cases.

Q. You have stated that the intended foreclosure proceedings were stayed under the letter of Mr. Acker of September 11, 1894; what
144 did you mean—how did that letter stay the foreclosure proceedings? A. That letter stayed the foreclosure proceedings because we were informed that the title to the property was in dispute and the property could not be sold, and the advice in the letter was that the attorney had—that Mr. Acker had—obtained a power of attorney from Bradshaw, to collect the rents from the property, pending the completion of the suits in reference to the title to the property.

Q. And upon that understanding, the association agreed not to press the foreclosure sale? A. There was no formal agreement.

Q. Well, formal or informal? A. As a matter of fact, we didn't press the foreclosure sale.

Q. And you didn't press it because of this arrangement—isn't that right? A. Because of the advice that we received from counsel that it would not be wise to press it.

Q. What I want to get at Mr. Armstrong is, isn't it true that you did not press the foreclosure proceedings because of the fact that your local attorney, Mr. Acker, was allowed to collect the rents and profits and hold them for the benefit of your association? *Q.* That largely influenced us.

Q. Do you state, Mr. *Acker*, that you did not examine these abstracts of title prior to the loan? A. I stated I have no recollection of it.

Q. Have you examined it since? A. I think I have looked through the title rather carefully since I became receiver of the association.

Q. Well since you did look through it you had no difficulty
145 in finding out the fact that it showed on its face that the Ashleys were sueing Walter, claiming, that they were owners of this property, in that equity suit?

Mr. LAMAR: We object to the question as immaterial, and as not in any way affecting the legal status of the controversy involved.

A. Answering the question, I will say that I do not consider that I knew enough about the laws of the District of Columbia, having always confined my examinations to Louisiana titles, to be able to pass a legal opinion upon the title.

Q. I have not asked you that Mr. Armstrong. A. I so understood the question.

Q. I have asked you whether, when you had examined this abstract, later, you didn't readily see on the face of it, the statement that the Ashley heairs had a suit in equity against John H. Walter, claiming that they were the owners of the property? A. I see that the record shows absolutely no title to the property in Joseph R. Ashley, when living or in his heirs when dead, yet, that in 1890, the lat-er, meaning the heirs of Joseph R. Ashley, instituted proceedings in equity, cause 12,318, against John H. Walter, whose title is now vested in said Hoagland, claiming to be the owners of the property and I further see that the docket shows an undisposed of motion, made by the defendants to dismiss for failure to prosecute, and I see the statement of the examiner that suit was of no importance, as it will undoubtedly be dismissed by the court.

Q. Then you further see, don't you, from the same abstract, that when the court did dismiss the suit, it did so without prejudice to the rights of the Ashleys to re-institute it?

Mr. LAMAR: We object to that question as not correctly stating the language of the notation to which reference is had.

146 A. I see from the continuation of the abstract, that on July 1st, 1893, the suit was dismissed for want of prosecution, at complainant's cost, without prejudice, but the words "without prejudice" were not understood by me, a Louisiana lawyer, the term not being used in our jurisprudence, and I would not understand what that meant.

Q. Have you such a thing in Louisiana as a title by adverse possession? A. Yes, sir.

Q. You knew then that the fact that the Ashley title was not of record, did not necessarily mean that they didn't have a good title, didn't you?

Mr. LAMAR: We object to this question in that it is perfectly immaterial what the ideas of this witness were, at a time long subsequent to the making of the loan, with regard to the effect of various instruments therein and is not proper cross-examination of this witness, as he is not undertaking to pass upon this abstract of title or is it charged that he ever passed upon the abstract of title in connection with the making of this loan.

A. I would not be able to answer that unless you state at what time you desire my knowledge. The statement made is rather indefinite and if counsel will put it so that I can answer it, I will endeavor to do so.

Q. I am asking you, as I think you must know, about the time you examined this abstract. A. I didn't examine that abstract until after I became receiver in 1899, and I did not have sufficient knowledge of the laws of the District of Columbia, to base any opinion upon it.

Q. When you did examine it, you knew, did you not, that
147 there could be a good title which was not a record title? A. I am absolutely unable to answer the question except as to Louisiana law, because I have no knowledge of what your laws are. I know that there is such a thing in Louisiana as title by adverse possession, but I know nothing about your law.

Q. Where there is no record title? A. I know you can get a title in Louisiana by actual possession, without a record title, but I do not know anything about the laws of the District of Columbia. I do my best to answer it, Mr. Darlington; I am not trying to be captious.

Q. Now, you show that your association required a complete abstract, which would show everything necessary to determine whether the title was good or not—you have so testified, have you not? A. Yes, sir the association did require that.

Mr. LAMAR: I believe I will object to that line of examination, and I ask that this objection may be a general objection.

NOTE.—It is agreed that this objection may apply throughout without necessity of reiterating the same upon the record.

Q. In other words, the local attorney, besides his own opinion, was required to send on a complete abstract giving everything necessary to show whether the title was good and that went to Mr. Kennard? A. Yes, sir.

Q. Well now, Mr. Armstrong, in view of the fact that this abstract did go to Mr. Kennard as you say it did, for that very purpose, and when the abstract, as you yourself say, shows on its face, that there was a claim by the Ashleys that they were the owners, although they didn't have a record title, and that the abstract further
148 shows that the dismissal of that suit was without prejudice—how is it that you have testified, as you have done, that your association had no notice of this claim? A. I testified that the association had no notice of the ejectment suits whatever; not that they had no notice of the equity suit.

Q. Or of the Ashley claims that they were the owners? A. I testified also that they made the loan in good faith and had no notice, because you cannot take a portion of a sentence without taking it all and we took the entire assertion of the abstract to be true. I will state further that under the knowledge of Louisiana law, which was the only knowledge which I had to govern me, that if a suit, pending suit, was dismissed, and after its dismissal with nothing on the dockets of the court to show a claim against the property, that any one making a loan or advance on the property, would be considered to be a party acting in good faith and their loan would be preferred to the party whose suit had been dismissed for want of prosecution.

Q. Do you mean to testify that under the laws of Louisiana, if a suit is dismissed by the court, not on its merits, but simply and expressly because it is not prosecuted, that one who purchases the property or lend- the money, knowing that there is an adverse claim, takes free of the adverse claim? If so kindly refer us to some decisions of the courts of that State so holding. A. I will endeavor to find the authorities I cannot do it now.

Mr. DARLINGTON: Please take notice that we shall insist upon the authorities if any such decisions exist.

Mr. LAMAR: The question is objected to because it inaccurately states the case as to notice and the whole line of cross-examination calls not for facts but for conclusions of law and is otherwise objectionable on cross-examination.

149 Q. Referring again to your statement that your association required a complete abstract, in addition to the local attorney's opinion, which abstract would contain everything that was necessary to show whether the title was good, I will ask you whether this abstract, the one upon which you say your company acted, does not, on its face, fail to show any title in Bradshaw or Walter? A. I cannot answer the question, for the reason stated heretofore sir.

Q. Don't you find on the very first page of that abstract that the legal title to this *this* property went in 1792 to George Walker and don't you find an utter absence of any conveyance from George Walker or from any one claiming to be an heir of George Walker, under which conveyance Bradshaw claims? A. It is impossible for me to answer the question, in justice to myself, for the reason that the chain of title treats of property in the District of Columbia. I have not sufficient knowledge of the laws of the District of Columbia and the rules of conveyancing, to answer the question.

Q. No matter where the property is situated, if you found in the abstract of title, that the record title was in George Walker and if you found no conveyance out of him or out of anyone professing to be his heirs, couldn't you say whether a record title is shown?

Mr. LAMAR: We object to the question as not being justified by the record and not being proper cross-examination.

A. Not necessarily, because the heirs of George Walker might have inherited from him without recording the title and without any papers specifically declaring them to be heirs—I know a case like that.

Mr. DARLINGTON: My question relates to a case in which there is no evidence of anybody which the abstract shows, claiming to be the heirs of George Walker.

150 Mr. LAMAR: We object to the assertion of counsel as highly improper and not justified by this record and we give notice of our purpose to object to the reading of the testimony sought to be adduced by this line of examination and while the witness is desirous of leaving the city and expecting so to do at once, counsel will

have to except to a question and have it certified to the court if opposing counsel insists upon continuing this character of questions.

Q. You are here claiming that your association made this loan in good faith and without notice of any defects in the title are you not? A. Without notice of any pending ejectment suit—we did not state—we never claimed that we were entitled to the equitable lien because we had no notice of the defects in the title, but simply because the pendency of the ejectment suits which were finally decided was concealed from our knowledge and if that knowledge had been brought home to us, I am able to say positively that the loan would not have been made.

Q. Perhaps I misunderstood you; you don't claim then, that you did not have notice of the defects in the title upon which these ejectment suits turned, but simply that you had no notice of the suits themselves?

Mr. LAMAR: We object to the assumption on the part of counsel that this witness concedes any defects in this title or that he has examined it or is competent to pass upon the title in this cause; on the contrary the witness has repeatedly stated that he did not pass upon the title in the first place and does not now, pass upon the merits or demerits of the title as shown.

A. I claim that the association had no notice of the defects in the title because the certificate shows that the suit in which, the equity suit to which attention was called, had been dismissed, after
151 lying dormant for several years, for want of prosecution. I cannot answer it any better.

Q. Have you not testified that you did not rely upon the certificates, but required the abstract to contain everything necessary to enable your general attorney to decide whether the title was good? A. We presumed that this did have everything necessary; that all the information was contained in this abstract.

Q. But you have admitted that an abstract which shows title in George Walker, and doesn't purport to show any title out of him, doesn't show a good title.

Mr. LAMAR: Counsel, with reluctance, again objects to the question on the ground that this witness has not admitted that the chain of title fails to show any passage of the title out of George Walker and to this extent, at least, the question inaccurately states the testimony of this witness and counsel calls upon opposing counsel to point out in this record, where this witness has made any such statement.

A. I do not remember any such admission; I do not recall it and I would not attempt to express an opinion on the subject.

Mr. DARLINGTON: Then I move to strike out every expression of opinion of this witness, upon every question of law involved in his testimony, on the ground that a gentleman who cannot answer such a question as that cannot be accepted as authority upon a question

of law anywhere. I shall further move to exclude, if I cannot get an answer to these questions, the parts of the testimony of Mr. Armstrong, which professes to claim action on the part of his association, in good faith and without notice, since he declines to be cross-examined upon the question whether the very abstract which he produces does not contain notice of the absence of a good title and I have no further questions to ask.

WITNESS: I may make an explanation, may I?

152 Mr. DARLINGTON: Oh, yes.

WITNESS: In explanation of my refusal to answer, I will state that my experience as a lawyer and in the examination of titles was confined to the laws of Louisiana; that I am thoroughly competent to testify as to any abstract of title relating to lands in Louisiana; that the question asked appears to me to seek to elicit an opinion upon an abstract of title to property in the District of Columbia, which I, as a lawyer, have never examined, the same having been examined by me since I became receiver, not with any idea of passing upon it legally, because I am not and have not at any time been competent to pass upon a title in the District of Columbia. I have never attempted so to do and could not now attempt it.

153 JAMES J. BECKER.

Direct examination.

By Mr. LAMAR:

Q. Please state your name and occupation? A. James J. Becker; vice president of the Real Estate Title Insurance Company of the District of Columbia.

Q. Mr. Becker, as such officer of such company are you the custodian of its records? A. I am sir; they are supposed to be under my charge.

Q. Mr. Becker, state whether or not on June 3, 1893, a chain of title to original lots 1, 2, 3 and 20 in square 939, was ordered of your company by John H. Walter?

Mr. DARLINGTON: I object to that as being irrelevant incompetent and immaterial and *res inter alios acta* so far as the defendants to this cause are concerned.

A. It appears from this order that it was and from the case we annexed to the order.

Q. Will you read that order to the examiner?

154 A. This reads

WASHINGTON, D. C., *June* 3, 1893.

The Real Estate Title Insurance Company, 470 Louisiana avenue.

Please prepare chain
Property orgl. lots 1, 2, 3 and 20, sq. 939
Only as to fee
To date of 12, 16, '92

Now owned by —— ——
Insert in the company's certificate annexed to said examination, the name of —— ——
And charge the fee of —— for said examination to the undersigned.
That was signed, J. H. Walter.

WITNESS (continuing, after looking at paper): It seems that was prepared through June 2nd., 1893, from this.

Q. Will you look at the yellow paper handed you, headed "Chain of title No. 20,497, from the records of the Real Estate Title Insurance Company" being a part of Exhibit W. W. M. No. 4, in this case, and state whether or not that is the character of chain that would have been issued by your company, on such order?

Mr. DARLINGTON: I object to that question as hypothetical and calling for the opinion of the witness and not for facts

A. Yes, sir.
Q. State whether or not this chain was issued in pursuance of said order. A. It bears the same number and I take it that it was; I can't tell positively without comparing all of these items.

Mr. DARLINGTON: I object to the answer as stating a mere inference and not any fact within the knowledge of the witness.

155 Q. Will you look at the record of the chain before you and state whether or not the chain forming a part of this Exhibit W. W. M. No. 4. is in consonance therewith?

Mr. DARLINGTON: Objected to as calling for the opinion of the witness and not for fact and also on the ground that the entire examination of this witness thus far has been as to matters with which neither the complainant nor the defendants have any connection.

A. That (indicating the yellow pages of Exhibit W. W. M. No. 4) seems to be an exact copy of this (indicating paper produced by the witness); it indicates each transfer during the period, recorded in the recorder of deeds' office; tax title is marked "Not pursued."
Q. Mr. Becker, will you state whether or not, on September 14th, 1892 an application was made to your company by John H. Walter for a certificate of title and opinion, covering lots 40, 41, 42, 48, 49, 50, 51, 52 and 53 of square 939?

Mr. DARLINGTON: I make the same objection.
NOTE.—It is agreed between counsel that the same objection may apply to all similar questions and answers thereto, namely: that the transactions between Mr. Walter and the Real Estate Title Insurance Company are *res inter alios acta* and incompetent, immaterial and inadmissible against the defendants to this cause.

A. He did, as appears from the order slip.
Q. Kindly read that slip from the original record, to the examiner. A. (Witness reads as follows:)

"WASHINGTON, D. C., *Sept. 14th*, 1892.

"The Real Estate Title Insurance Company,

"470 Louisiana avenue.

"Please prepare certificate (cont. & opinion)
"Property, lots 40, 41, 42, 48, 49, 50, 51, 52, & 53, sq. 939
"Now owned by Lydia Hoagland
156 "Certf. left and surrendered
"Insert in the company's certificate annexed to the examination, the name of —— ——
"And charge the fee of $15.00 for said examination to the undersigned."

John H. Walter appears to have signed it. In the corner it says "Sept. 15, 1892, sure;" that means that we promised to finish it by that day.

Q. Have you ever seen Mr. Walter write? A. No; I have seen what purported to be his signature.

Q. Did you give the number of the application? A. The number of the case is 18,868.

Q. I show you a copy of number 18,868 of what purports to be a certificate from your company of date September 16, 1892, having been signed by M. Ashford and George E. Fleming—will you look at the record of the papers in connection with this matter as you find them on file in your office and state whether or not this is a correct copy therefrom? A. I have compared this copy with the original opinion issued in this case, and find that it agrees with it in every respect except the part which refers to three-fifth- of the legal estate; the original opinion reads "three-fifths of the legal estate in original lots two and twenty" and the copy reads "three-fifths of the legal estate in said lots"—that is the only difference.

Q. Then, with this possible exception, this paper (indicating paper produced by complainant's counsel and referred to as copy) is a correct copy of the certificate as shown by your records to have been issued at that time?

Mr. DARLINGTON: I object to the question because the witness has not stated that the exception was a possible one but an
157 actual one. This in addition to my general objection, heretofore made.

A. I can state that the opinion in the copy which you produce is a copy of the opinion attached to the original case, No. 18,868. I make no statement with reference to this first page, because I have never seen it.

Mr. DARLINGTON: You mean that it is a copy with the exception which you stated?

WITNESS: With the exception I stated.

Q. Will you kindly read from the original records of your office the words on the same page, immediately following the opinion—I

mean the part in red ink? A. (Witness reads as follows:) "Certificate as per above opinion issued dated, September 16, 1892."

Q. State whether or not lots 48, 49, 50, 51, 52 and 53 in John H. Walter's subdivision appear in the caption of the case in which this certificate was ordered to be issued? A. They do.

Q. State whether or not it is the custom of your company and was at that time to issue certificates, such as was issued in this case, without affixing thereto, the character of certificate set forth in the first page of the copy, in which certificate was designated the lots covered thereby.

Mr. DARLINGTON: I object to the question as an incompetent method of identifying the first page of the copy produced by counsel and which the witness has testified is unlike anything in his records. This in addition to my general objection heretofore made.

A. I don't think I quite understand that question.

WITNESS (continuing, after explanation by counsel): The formal part of the first page of the copy is in the usual form such as
158 was then used and is now used.

Q. The balance of my question relates to whether or not you do not state on the first page, the lots which form the subject matter of the inquiry? A. Yes; we do; there it is stated, right in this case.

Q. Will you compare the third page of this copy with the original record in your hands and state whether or not that comports with the original record?

Mr. DARLINGTON: Same objection.

A. The third page of the copy sets out the deed of trust which we reported as an incumbrance; it agrees with the original.

Q. State whether or not it is the custom of your company to keep copies of the formal part of certificates such as you have referred to as being substantially the language you used then and use now as contained in the first page of the copy I have shown you? A. No sir.

Q. In view of the custom of your company and the state of the records to which you have referred and the application made for a certificate as to these lots, are you able to state positively that the certificate issued, did not use the words "said lots" instead of the words "lots two and twenty" as contained in the opinion?

Mr. DARLINGTON: I object; the witness is here to prove a copy of his records, not to prove the impossibility of the copy being a copy.

A. No, I cannot.

Mr. LAMAR: I offer in evidence the copy of certificate and opinion about which the witness has just been interrogated.

159 Mr. DARLINGTON: I object to the paper, as being without a history and without any connection thus far disclosed, with

either of the parties to the transaction, involved in this suit; this in addition to the general objection heretofore made.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 17."

Q. Look at the original opinion on the record which you produced from your office, which is attached to the paper with the caption "All those parts of original lots two, three and twenty in square 939, which embrace lots forty, forty-one, forty-two, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three, in John H. Walter's sub-division of lots in square 939, as per plat in Liber 19, folio 47, of the records of the office of the surveyor of the District of Columbia;" also attached to said application of said Walter of September 14, 1892, and read to the examiner the language of the opinion.

Mr. DARLINGTON: I object to this, the data clearly being merely the private record of the Real Estate Title Insurance Company, therefore without admissibility, competency or relevancy as to any of the parties to this suit.

A. (Witness reads as follows:) "I have examined the title to the parcels of ground above described and consider the same good according to the record in Lydia Hoagland, subject to the following deed of trust and such taxes as may be due as to which the collector will certify. There is an old deed of trust dated in 1804, from George Walker, then the owner of said land, to William Prout for the benefit of creditors, but I regard it as unimportant after this lapse of time. Three-fifth- of the legal estate in original lots two and twenty, conveyed by said deed of trust is also vested in
160 said Lydia Hoagland. There is also an outstanding tax title in original lot three, but the tax sale was void and the tax deed passed no title. On March 1st., 1890, the heirs of Joseph R. Ashley, filed a bill in equity, No. 12,318, against John H. Walter, then the owner, whose title is now vested in Mrs. Hoagland, claiming to be the owners of said land, but the record shows no title in said heirs or in said Joseph R. Ashley in his lifetime.

Q. State whether or not the records of your office show the payment by Mr. Walter, of the amounts chargeable both for the chain and for the certificate of title about which you have testified? A. They do.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Becker, how long have you been connected with the Real Estate Title Insurance Company? A. Ten years.

Q. Since about 1892? A. Yes, sir.

Q. Have you any personal knowledge of the matters about which you have testified? A. No sir.

Q. What is what has been called, throughout your examination "the record"? A. The case and chain of title showing the different transfers with the opinion of the title company thereon.

Q. In other words, it is simply the title company's notes of title in connection with this property? A. Yes, sir.

Q. Referring to the order of June 3, 1893, for a chain of
161 title—can you tell us what the words "only as to fee mean"?

A. The fee means, as we understand it, in such an order, the proprietary title, without reference to the possessory or tax title.

Q. This order requests you to make a report only of the conveyances which had come down in regular chain from the original proprietor? A. That is correct.

Q. How far, Mr. Becker, is such a chain good, as to the real ownership of property, according to your experience and observation?

Mr. LAMAR: I object to the question as the witness has not been interrogated as to this phase of the matter but rather has been interrogated as the custodian of the records and documents of the company.

Mr. DARLINGTON: I asked this question, supposing the object of the examination of Mr. Becker is to show such examination of title as persons would reasonably act upon.

Mr. LAMAR: Counsel for complainant gives notice that any testimony elicited by the defendant's counsel from this witness, as an expert or otherwise, not based upon the examination in chief, will be sought to be made the testimony of the defendants.

It merely indicates the ownership of the fee title—it does not show the tax title.

Q. And would it in fact, indicate the ownership of the fee title? A. I will change that expression: it shows the transfers of the fee—we had better put it that way.

Q. You- company, recognizes the fact does it not, that it is the law, as the Supreme Court has frequently declared, that 20 years' adverse possession without any record title gives a good title?

Mr. LAMAR: I object to this question and to any answer which may be given thereto as highly improper and incompetent, and if the witness is being examined as the witness of the defendants, the question is leading.

162 A. Yes, sir.

Q. Returning to my former question—how far, in your experience, Mr. Becker, is a chain or certificate of title which wholly omits everything except the conveyances leading back to the proprietary owner, an indication of the real ownership of the property? A. Such a chain would not show a complete chain of title.

Q. I find on the paper which you produced, and which has been referred to as your record, an order from John H. Walter, dated March 29, 1892, and I observe upon it these words "Give verbal report"—what does that mean? A. That means that before the case was written up, we were to report verbally to Mr. Walter in order to enable him to record conveyances and have them noted on our records so as to show title in his grantees when the case was finally written up for delivery.

Q. You do not know that that was his object in ordering a verbal report? A. No, sir.

Q. Now, having ordered the verbal report of March 29th, 1892, the next thing that you find is an order for a chain of title omitting everything except the transfers of the proprietary title—is that right? A. It is not.

Q. What is the fact? A. The next order was the order for the continuation and opinion—the new certificate as we call it—the order dated September 14, 1892.

Q. Is it under that order that the opinion which you have read appears in your notes? A. Yes, sir.

Q. In whose handwriting is what you call the opinion? A. Mr. William D. Hoover's.

163 Q. Is that the usual form? A. That is the usual form; of course, the wording varies to suit the facts. Mr. Ashford interlined in it the words "according to the record."

Q. Those four words are interlined in Mr. Ashford's handwriting? A. Yes, sir.

Q. What is the significance of those words added by Mr. Ashford? A. It means that the title by the record is good. We did not deal with the facts outside of that.

Q. That is, if there has been no adverse possession, or other interference with the proprietary title, the title is good? A. Yes, sir.

Q. Then, following this certificate in order of time comes an order for a chain of title should show the proprietary deeds or deeds which come down from the original proprietor. A. Only so far as they appear by the record; it means the fee as it appears by the record.

Q. That means—that request for a chain of title, "as to fee only" means a chain showing only the conveyances from or through the proprietary owner? A. Yes, sir.

Q. That is transferred by conveyances—not by adverse possession? A. Yes, sir; by direct conveyances.

Q. Please state whether or not such chain of title includes pending ejectment with reference to the property reported upon? A. It does not.

164 Q. In one of the papers to which you have referred you stated that the tax title is marked "not pursued"—why was that? A. That was in the chain—it was done by request.

Q. Of whom? A. The applicant, John H. Walter.

Q. Do your notes of title show the certificate of title issued to anybody—any of these you have referred to? A. It was presumably issued to the applicant.

Q. My question is whether your records show it? A. Yes, it was issued—I looked on the book,—to John H. Walter.

Q. To anybody else? A. No, sir.

Q. Only the one name? A. Yes, sir.

Q. The change in the copy, Exhibit No. 17, from the opinion, as you have it in your notes, as I understand it, is whereas your notes speak of the legal estate in "lots two and twenty," the opinion in the

copy refers to the legal estate in "said lots," and the only lots in the copy named are lots forty, forty-one, forty-two, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three—am I right? A. Yes, sir, except at the end "being embraced in original lot- two, three and twenty."

Q. You are aware, Mr. Becker, are you not that there has been much uncertainty as to which are the original lots in square 939?

Mr. LAMAR: I object to the question on the ground as heretofore stated.

Mr. DARLINGTON: Counsel for defendant agrees that Mr. Lamar may have the benefit of every possible form of objection, which may or can be made to each and every question asked on this cross-
165 examination and any answers which may be made thereto, at the hearing, as though said objections had been specifically stated on the record.

Q. (continued). You are aware of that? A. Yes, sir.

Q. In that square the original certificate of division, and all early copies thereof, contain two sets of numbers—two numbers to each lot, one in ink and one in pencil? A. Yes, sir.

Q. The ink numbers commence at the southwest corner of the square in opposition to all other squares in the city, while the pencil numbers commence in the southeast corner in conformity with the other squares in the city? A. Yes, sir.

Q. Can you tell us whether this subdivision, lots forty to forty-two and forty-eight to fifty-three, in square 939, are embraced in original lots two, three and twenty, according to the pencil numbering which conforms to the other squares of the city, or according to the ink numbers in opposition to the other squares? A. In conformity with the ink numbers.

Q. I think you said that you hadn't anything to do with this certificate yourself, personally? A. No, sir; I did not.

Q. You are unable to tell us why it is that this opinion does not refer to this controversy over these lots, but adopts one set of numbers without regard to that controversy? A. Speaking of that opinion, I cannot, sir.

Q. The concluding part of this opinion "but the record shows no title whatever in said heirs, or in said Joseph R. Ashley in
166 his lifetime" refers simply to the proprietary title? A. That is correct.

Q. Am I right in my understanding that the paper marked "Chain of title" annexed to "Exhibit 4" in this case was also issued to Mr. John H. Walter. A. Yes, sir.

Q. In whose handwriting are the words "Certificate as per above opinion issued, dated 9–16–92," found below on the same page of the original opinion? A. In the handwriting of Mr. William H. Van Vleck.

Q. What does that indicate? A. That he was responsible for comparing the case as delivered with the original notes.

167 JOHN D. COUGHLAN.

Direct examination.

By Mr. LAMAR:

Q. State your name, residence and occupation. A. John D. Coughlan, Washington, D. C., secretary of the Columbia Title Insurance Company.

Q. How long have you been in the title insurance business and in what capacity have you acted? A. I began with the company as secretary when it started business here about fifteen years ago; I also did some work before that time.

Q. Are you familiar with the method of procedure and the custom of the title companies here in regard to giving notes of title or chains of title? A. Yes, I am familiar with the way they get up chains to issue certificates or reports on them.

Q. What is a proprietary title? A. We call a proprietary title one that comes down from the original proprietor by proper conveyances, in a regular chain, by way of deeds, wills or the like, as contradistinguished from a tax title or possessory title.

Q. State whether or not your company ever issues a chain showing alone the proprietary title where there are instruments of record purporting to convey the same land, whether founded on tax title or otherwise, without making reference in such chain to such other purported conveyances.

168 WITNESS: You mean simply a chain of title or a chain upon which a certificate is based?

Mr. DARLINGTON: I object to that as calling for hypothetical statements.

Mr. LAMAR: I mean a chain of title.

A. I suppose that might depend on circumstances; if a party asked us for information upon a given line of title, references might be supplied, not in our usual chain form but simply in the nature of memoranda. But I hardly think a chain of title, so-called, would be issued on any particular part of the title, which, in the form of its original issue might be calculated to deceive a party so that he would be entitled to act on it as a chain in its entirety without purporting to give him all the information to be taken into consideration in the intended use of it.

Q. Will you look at the yellow paper, headed "Chain of title" No. 20497 from the records of the Real Estate Title Insurance Company," constituting a part of "Exhibit No. 4" in this case, and state whether or not that conforms to the form used by your company in supplying the character of memoranda to which you had just referred in such form as to avoid misleading any-one? A. It is substantially, so far as information given, the same.

Q. Does your company sign its name to chains of title of that kind given out for memorandum purposes only?

Mr. DARLINGTON: I object to the preceding question and answer

and to all similar questions and answers on the ground that it is incompetent and without bearing on the rights of defendants in this case.

NOTE.—It is agreed between counsel that this objection may apply throughout without the necessity of being reiterated upon the record.

A. Chains are never signed.

Q. State whether or not you have ever had occasion to pass
169 on the proprietary title known as the George Walker title?

Mr. DARLINGTON: Same objection.

A. The George Walker title is met with in quite a large number of lots in the eastern section of the city, and is met with quite frequently. As a matter of course, incidentally, I have passed upon it, but not in connection with the case under examination.

Q. State whether or not that title has been recognized by your company as a good proprietary title as contradistinguished from a possessory or tax title?

Mr. DARLINGTON: In addition to my general objection, this question and any answer which may be made thereto are objected to as manifestly incompetent for any purpose in this case.

A. I don't recollect any case in which the George Walker title has been reported on to the exclusion of the tax or possessory title. In many cases the holders of the tax or possessory titles have secured quit claims from the holders of the proprietary title, under various deeds purporting to pass the George Walker proprietary title, and in such case, where such possessory title and such proprietary title meet we usually report the same as a good record title.

Q. Where the tax title is separate and distinct from what is regarded by your company as a good proprietary title, do you pass such titles as these as good?

Mr. DARLINGTON: My objection applies to all of these questions and answers without being repeated.

A. The tax title, when accompanied by proper possession might be reported as a good title by possession.

170 Q. For how long a period does the possession have to affirmatively appear? A. For the statutory period. We state the fact that if there has been possession—adverse possession—for twenty years, or more, the title may be good by possession or some such language. We are generally furnished with affidavits which clearly show such possession. In notorious cases we sometimes report the title as good by possession, without reference to how the possession has been had.

Q. That part of the examination refers to where you guarantee the title does it not? A. Not necessarily; there are notorious cases where it is simply useless to ask for proof—where there is no need of affidavits. You know it yourself and the community knows it, and we simply state that the title is good by possession, without stating the facts necessary to make out the possession.

Q. Will you look at the chain of title I hand you and state whether or not that covers what is known as the Walker title? (Showing witness chain of title forming part of Exhibit No. 4.) A. That appears to be the title—the Walker title.

Q. Is there anything on that showing the dates of the recording of the deeds? A. No, the dates are not given—liber and folio are given.

Cross-examination.

By Mr. DARLINGTON:

Q. With the liber and folio given does that give you a reasonably fair indication of the date of the recording of the deed? A. Approximately—to the initiated.

171 Q. Have you examined this chain of title forming a part of Exhibit No. 4 with any degree of care? A. No, sir; I haven't looked at it.

Q. I ask you if it does not show an allotment to George Walker in 1792 of the property referred to and that then, with the exception of a few very old deeds from him, practically a century intervened before any other conveyance was made?

Mr. LAMAR: Counsel objects to the question on the ground that the instrument, itself, does not state the date of the first conveyance.

A. Yes, sir.

Q. You are aware, are you not, from your general knowledge of the Walker title that a great many conveyances did intervene which are not shown on the record? A. Yes, many conveyances intervened affecting the lots to which Walker had the proprietary title.

Mr. LAMAR: I again object to the answer, in that the witness does not claim to have known what instruments there were with respect to the particular lands here in controversy.

Q. If I clearly understand your testimony in chief, that is just the kind of a chain of title which your company does not give? A. Yes, sir; it does not.

Q. That is just the kind of a chain of title which you have referred to as one that might mislead? A. Yes, sir.

Q. You have been asked to distinguish between a proprietary title and a tax or possessory title—have we no a very considerable portion of the property in the city of Washington, including some of our most valuable real estate, resting upon these possessory titles? A. Yes, sir.

Mr. LAMAR: Objected to as irrelevant.

172 Q. And I further understand that the original chains of title issued by your company indicate all the conveyances of the title of the land to which they refer, whether these conveyances are from the persons holding the proprietary title or from the adverse possession claimants—am I right? A. That is correct.

In some instances where the title does not pass by the deed or conveyance in question, a bare reference may be made.

Q. You mean where the deed is so defective as not to carry any title? A. Yes, and also where the title has been passed upon as in the Blodgett case.

Q. You mean where the courts have already declared that the deeds passed no title? A. Yes, sir.

Q. You said something about a union of the Walker proprietary title with tax titles—suppose a tax title, not accompanied by the statutory period of possession was accompanied by a quitclaim from these Walker quitclaim grantees—is it the custom of your company to pass a title based upon such union of title as that as a good title? A. Where the tax title apparently has a consecutive line of conveyances and is, in itself, complete with the exception of the proprietary title outstanding, we would report the combination of the two as completing the title, if there was no possessory title outstanding adverse to those holding under the tax title.

Q. What I want to get at is this—has it ever been proven to the satisfaction of the title companies that these so-called Walker quitclaims are from the heirs of George Walker? or include any or all of the genuine heirs of said Walker, to the extent that they can be accepted as making a good title when unaccompanied by a possessory title? A. I think it is generally accepted that John H. Walter
173 has made a thorough examination as to the family of George Walker in a systematic manner and I think it is generally considered, while it has never been proven to the satisfaction of the company, that they are the heirs, yet it is believed that he has, for the most part, secured the title of the most, if not all, of such heirs; but by reason of this lack of proof I don't recollect that the company has ever issued a report favorable to that title standing alone, but only in connection with and when supplemented by a line of conveyances under tax titles.

Q. Has any evidence ever been furnished other than the statements of John H. Walter, himself, that he has secured any of the heirs of George Walter, insofar as you know? A. So far as I know, I don't recollect any proof one way or the other.

Q. Has any proof been furnished that these parties who purport to have signed these deeds were the heirs of George Walker, other than the information which came from John H. Walter himself? A. I do not know of any.

Q. Is it not well known that Mr. Walter himself has always failed to meet the issue as to the genuineness of these deeds in the ejectment suits which have been tried? and that in no instance has he undertaken to substantiate them. A. I think that is the fact.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Coughlan is there any other line of titles save and except this springing from tax title, which conflicts with the proprietary—

old proprietary—title of this Walker line? A. There might be a possessory title pure and simple.

Q. But there is no other title purporting to come through
174 George Walker, save and except the title with which the chain that appears in this Exhibit No. 4 deals? A. That is right; so far as the records prove.

Q. State whether or not any one not familiar with the dates of the different libers could from that chain, indicating Exhibit No. 4, determine the dates of the record of deeds or other instruments referred to in this chain of title? A. Not merely—not without further reference to the libers where they were recorded.

Q. A non-resident of the District of Columbia, not familiar with the books of the District could not from this chain of title determine the dates of these instruments? A. No, sir.

175 WASHINGTON, D. C., *May* 7, 1902.

Met pursuant to adjournment.

Appearances: The same as at last session.

The following proceedings were had.

Mr. LAMAR: Counsel for complainant offers in evidence two plats, the first showing the original lots in square 939 and the second being a certified copy of what is known as John H. Walter's subdivision of lots in square 939.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 18" and "Exhibit W. W. M. No. 19," respectively.

WALTER H. ACKER.

Direct examination.

By Mr. LAMAR:

Q. Mr. Acker, will you state what your business was in September, 1893, and has been since that time? A. I am a member of the bar and have also been a licensed real estate broker.

176 Q. State whether or not you are familiar with the consummation of a loan or advancement made by the New South Building and Loan Association of New Orleans, Louisiana, involved in these proceedings.

WITNESS: I presume you mean a loan of twenty thousand dollars to Aaron Bradshaw.

Mr. LAMAR: Yes, sir.

A. Yes.

Q. State briefly your connection with the advancement of such loan.

NOTE.—Upon objection by Mr. Darlington it is agreed between counsel that this question and any answer which may be made thereto, and every question and answer relating to the transactions

between the building association and Bradshaw goes in under the objection of counsel for the defendant, on the ground that the same are *res inter alios acta* and incompetent and inadmissible to bind the defendants in any way, without the necessity of repeating the objection upon the record.

A. At the request of one Mr. V. Brevard, who stated that he was the general agent of the New South Building and Loan Association of New Orleans, I continued a title of certain lots in square 939 and proceeded to disburse the money under a loan of twenty thousand dollars to one Aaron Bradshaw.

Q. Will you look at Exhibit No. 4 in this case and the last three pages thereof and state whether or not you attached the same to the other papers and whether or not that is your continuation to which you refer. A. Yes; that is it.

Q. State to whom you made that report on the title? A. This report was made to the New South Building and Loan Association.

Q. State what, if any, instrument was executed and placed of record prior to any advancement being made by the associ-
177 ation on account of this loan? A. There was a deed of trust for twenty thousand dollars from Aaron Bradshaw and wife to John H. Kennard and Johnston Armstrong to secure the loan of twenty thousand dollars from said association.

Q. Look at Exhibit C to the original bill and state whether or not that is a certified copy of the instrument to which you refer? A. That appears to be a certified copy of the deed of trust.

Q. State whether or not the disbursements of this loan by the company were made through you. A. To the extent that the company would send me, in the first instance a draft, payable to the order of Aaron Bradshaw; and, following that, checks to his order until the sum of twenty thousand dollars had been disbursed.

Q. State what precaution- were required by the company to be taken by you before turning over these different checks, beginning with the first. A. The company would forward with each check, including the draft which was sent for the first instalment, a slip showing the requirements of the company. These were rather technical in character. I have not the slips before me, but they practically required that Bradshaw should prove that he had paid for material and labor on the buildings, the amount of the previous payment before he was entitled to receive the second payment and so on with each of the following payments. He was required to prove that he had expended on the buildings the preceding payment, before he was entitled to receive the payment in question. In each instance full proof of this was submitted to me.

Mr. DARLINGTON: I object to the statement as to the character of the proof, the proof itself being the only competent evidence of what it was, and I shall move at the hearing, to strike out this testimony.

Q. Mr. Acker, I show you Exhibit No. 6 in this case, con-
178 sisting of five papers, and ask you to identify your signature thereto, and to state whether or not these certificates were sub-

mitted to you, prior to making payment of the several instalments of this loan. A. Yes, that is my signature, and these were submitted to me and by me forwarded to the company.

Q. Prior to the first payment under this loan, Mr. Acker, there was to have been expended on the property how much?

Mr. DARLINGTON: Don't the papers show?

WITNESS: The papers show that clearly.

Q. State whether or not, prior to turning over the first check, you visited the premises? A. It was my custom to visit the buildings at the time each payment was due to see that the work had progressed to that point—that it had progressed to the point required to be reached before that payment could be made.

Q. You did so in each instance? A. Yes; in each instance.

Q. Was Mr. Bradshaw there on each of these visits? A. No; I don't think he was there every time.

Q. State whether or not, during the disbursement of these funds, there was anything said to you or notice given to you by or on behalf of any of the defendants to this suit asserting any claim in them to the property or objecting to the placing of improvements thereon? A. None, whatever, so far as I know.

Q. Are you familiar with the signature of John H. Walter? A. No.

Q. Did you ever see him write? A. No; I never saw him write.

179 Q. Are you familiar with the signature of B. Stanley Simmons? A. Yes, sir.

Q. Have you ever seen him write? A. Yes, sir.

Q. Are these the signatures of Mr. Simmons to these various papers? (Indicating Exhibit No. 6.) A. Yes; I should say that they were.

Q. Are you familiar with the signature of Aaron Bradshaw? A. Yes.

Q. Did you ever see him write? A. Yes, sir.

Q. Look at the letter dated September 25th, 1893, purporting to be signed by Aaron Bradshaw, which I show you, and state whether or not that is the signature of Mr. Bradshaw to that letter? A. I should say that it is.

Q. Look at the letter dated March 8th., 1894, purporting to be signed by Aaron Bradshaw and state whether or not that is his signature to that letter. A. Yes: I should say that that was his signature.

Q. Look at the letter dated September 21, 1893, purporting to be signed by Aaron Bradshaw and state whether or not that is his signature to that letter? A. I make the same answer to that question.

Mr. LAMAR: I offer these three letters in evidence.

NOTE.—And the same are filed by the examiner and marked "Exhibit W. W. M. No. 20," "Exhibit W. W. M. No. 21" and "Exhibit W. W. M. No. 22," respectively.

Mr. DARLINGTON: I object to these letters as *res inter alios*
180 *acta* and incompetent as against the defendants. The fact that they are in the handwriting of or signed by Aaron Bradshaw is insufficient to make them evidence for any purpose.

Q. Prior to the turning over of the first check to Bradshaw, was the paper which I hand you, delivered to you? A. Prior to the turning over of the draft this paper was delivered to me; the draft was for the first payment.

Q. Do you know the signature attached to this paper? A. No; I do not know the signature.

Mr. LAMAR: I offer this paper in evidence.

Mr. DARLINGTON: I object to this paper on the grounds heretofore stated and in addition thereto, because it is not sufficiently proven.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 23."

Q. State whether or not the instrument which I show you, dated October 28, 1893, and marked "Agreement as to taxes" bears the signature of Aaron Bradshaw? A. Yes; that is his signature.

Mr. LAMAR: I offer this paper in evidence.

Mr. DARLINGTON: And I make the same objection.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 24."

Q. I show you a paper on the back of which appears "Agreement as to insurance," dated October 28, 1893—state whether or not that is the signature of Aaron Bardashaw on that paper? A. Yes; that was signed in my presence.

Q. State whether or not the last two papers I have shown you, were received by you among the papers preliminary to the making of this loan? A. Not to making the loan but to turning the money over.

181 Mr. LAMAR: I offer in evidence the paper about which the witness has just been interrogated, marked "Agreement as to insurance."

Mr. DARLINGTON: I object to this as incompetent and irrelevant and as not sufficiently proven, in addition to my general objection heretofore made to all this line of examination.

NOTE.—The paper is filed by the examiner and marked "Exhibit W. W. M. No. 25."

Q. Look at the paper which I show you marked "Bid for loan," dated October 28th., 1893, and state whether that is the signature of Aaron Bradshaw to that paper? A. Yes; that is his signature.

Mr. LAMAR: I offer this paper in evidence.

Mr. DARLINGTON: I make the same objection.

NOTE.—And the same is filed by the examiner, marked "Exhibit W. W. M. No. 26."

Q. I hand you what is marked "Short copy," and is marked "Satisfied," and ask you whether or not that paper passed through your hands prior to making the first delivery of money on the loan? A. Yes, sir.

Mr. LAMAR: I offer this paper in evidence.

Mr. DARLINGTON: I make the same objection.

NOTE.—And the same is filed by the examiner, and marked "Exhibit W. W. M. No. 27."

Q. State, Mr. Acker, the dates as near as you can, and the time at which each of these instalments of the loan were turned over by you to Mr. Bradshaw, and the amounts of the payments. A. The first payment was four thousand dollars.

182 Q. Give the time that was turned over? A. You have rather got me on the time. The first draft was received by me from the association on the—I am trying to refresh my memory. I received the first draft on the 17th day of November, 1893. I turned it over to him within a few days—as soon as the formalities could be complied with; then the others followed along at intervals of two three or four weeks as the buildings went up. I can't give the dates. This building period covered four or five months.

Q. State, as near as you can, the date at which the last draft or check, for seven thousand dollars, was turned over? A. Some time in April, 1894.

Q. Mr. Acker, will you look at the paper I hand you, with the backing "Release of liens," and state whether or not that paper was ever in your hands and if so, under what circumstances it was received? A. That paper was delivered to me by Aaron Bradshaw prior to the turning over to him by me of the last instalment of the loan. It is a release from the various material men who were interested in the building of these houses.

Q. Will you look at the signature B. Stanley Simmons, to that paper and state whether or not it is his signature? A. I should say that it is.

Q. Do you know the signatures of any of the others on there? A. I know the signature of Stockstill and the signature of Thomas W. Smith.

Q. Have you seen each of these parties write? A. Yes, sir.

Q. And you say the signatures occurring here are to the

183 best of your knowledge and belief their signatures. A. Yes, sir.

Mr. LAMAR: This instrument is offered in evidence to be appropriately marked:

Mr. DARLINGTON: I make the same objection, let it be understood to all of these papers, without repeating it on the record, on each of the several grounds heretofore stated.

NOTE.—It is agreed between counsel that the foregoing objection of Mr. Darlington may apply throughout without the necessity of reiterating the same upon the record.

NOTE.—The said paper is filed by the examiner and marked "Exhibit W. W. M. No. 28."

Q. I show you Exhibit No. 7 in this case, headed "Affidavit of contractor" and ask you to state whether or not that paper passed through your hands prior to the turning over of the last instalment of the loan to Bradshaw? A. Yes, that passed through my hands.

Q. I show you Exhibit No. 10 in this case, marked "Power of attorney" and ask you to state whether or not the signature Aaron Bradshaw thereto is the signature of the Aaron Bradshaw in this case? A. That is his signature; yes sir.

Q. Do you know the signature of his wife? A. No; his wife was ill at that time and the paper was sent out to his house for her signature.

Mr. DARLINGTON (after request from Mr. Lamar): Counsel for defendants waives proof of the signature of Mary E. Bradshaw.

Q. Will you look at Exhibit No. 12 herein, with the name Aaron Bradshaw signed thereto, and state whether or not that is the
184 signature of Aaron Bradshaw? A. That is his signature.

Q. Will you look at Exhibit No. 5 with Aaron Bradshaw's name signed thereto, and state whether or not that is his signature? A. That is his signature.

Q. Look at Exhibit No. 13, and state whether or not the name Aaron Bradshaw signed thereto, is the signature of Aaron Bradshaw? A. In this exhibit there appears to be two papers; the signature to the original is in his handwriting—the other appears to be a copy.

Q. When, if at all, Mr. Acker, did you first learn of the pendency of any ejectment suits, on the part of any of the defendants in this cause, affecting the land, or any part thereof, involved in this controversy? A. About three weeks prior to the signing of the power of attorney for the collection of rents—Exhibit No. 10.

Q. Kindly state about when it was, after refreshing your recollection from the power of attorney? A. It was in the year 1894, about the month of October—no, not October—August I would say.

Q. State from whom you acquired that information? A. From Aaron Bradshaw.

Q. Under what circumstances? A. Mr. Bradshaw had gotten into arrears to the association for monthly payments and owed them several months dues. They wrote me instructions with reference to foreclosure proceedings. I wrote the foreclosure "ad." and sent it down to the association and it was signed and sent back to me. I then wrote to Mr. Bradshaw, prior to inserting it in the paper; he came to see me and at that interview Mr. Bradshaw informed me that there were certain suits affecting the title to this property, pending, and of course I immediately wrote the association
185 in reference to it.

Q. Mr. Acker, your letter to the company giving them the first information on this subject—will you state what the date of it was? A. I can't tell you; the letter is in evidence.

Q. Will you, look at Exhibit No. 9, which appears to be a letter from you of date September 11, 1894 and state whether or not that is the letter to which you refer? A. That is the letter to which I have reference; yes, sir.

Q. Mr. Acker, there is an expression in this letter with regard to—in your letter you say, speaking of Bradshaw, "He appears to be well known in the neighborhood of these houses, has lived there a long time and at least has influence enough with his neighbors to prove his statements, especially since he has several thousand dollars in the property,"—kindly explain what you meant by that expression? A. I meant that living in the neighborhood, Mr. Bradshaw could more readily get information in regard to the property than I or any other stranger in the interest of the association could get it. Naturally the neighbors would not give me information as readily as they would give it to him.

Q. In addition to the receipts, etc., which you have testified to as having passed through your hands prior to the turning over of the instalments of this loan, you say there were more detailed vouchers given by the individuals themselves—will you state what became of those vouchers? A. The vouchers in connection with this loan were sent to the New South Building and Loan Association after the final completion of the transaction; a good many of them were sent during the intervening time; they passed out of my hands into theirs.

Q. Look at the package of vouchers handed you and state whether or not they were among the number which passed through
186 your hands? A. I should say all of these were among the vouchers which passed through my hands. These are not all, however; I think there were more than those.

Q. State whether or not you remember distinctly that there were submitted to you vouchers aggregating the full amount of the contract price before the final payment was passed over? A. Yes, sir.

Mr. LAMAR: I offer this package of vouchers in evidence.

Mr. DARLINGTON: Subject, of course, to the same objection.

NOTE.—And the said package of vouchers numbering — papers attached together as one exhibit are filed by the examiner and marked "Exhibit W. W. M. No. 29."

Q. In August or September, 1894, when Mr. Bradshaw mentioned the pendency of the ejectment suits, state whether or not he gave you any information relative to the possession of the property?

Mr. DARLINGTON: I object to this—of course it is under my general objection, but it seems to me that the evidence called for by this question is so manifestly hearsay—the conversations with Bradshaw relative to the adverse possession—that I suggest the time should not be consumed with it.

A. When we were discussing the question of the cloud on the title, Mr. Bradshaw exhibited from fifteen to twenty-five—I should say twenty to twenty-five—affidavits as to the question of adverse pos-

session, to show how strong his own case was and how weak the defendants' case was.

Q. Mr. Acker, will you look at the paper I hand you entitled "Receipt of W. E. Aughinbaugh to Bradshaw" and state when
187 that came into your possession and from whom. A. In 1894—the latter part of 1894—I should say. This was turned over to me by Mr. Bradshaw under the following circumstances. I will have to go a little into details here. The New South Building and Loan Association had a claim against Mr. W. E. Aughinbaugh, an attorney in this city, on a note, and in his answer filed in the suit he said that the company owed him the sum of two hundred and fifty dollars for services rendered in connection of the examination of the title of the land in square 939 belonging to Mr. Bradshaw. In my communications with Mr. Bradshaw he produced the receipt from Mr. Aughinbaugh and this is the paper.

Mr. LAMAR: I offer this paper in evidence.

Mr. DARLINGTON: I make the same objection that I have made to the rest of these papers.

NOTE.—And the same is filed by the examiner, marked Exhibit W. W. M. No. 30.

Q. State when this controversy arose? A. In the fall of 1894, I should say.

Q. Mr. Acker, will you state whether or not these houses were constructed after your first payment, on the advances made as the houses progressed? A. Yes, the houses were constructed—the houses were completed.

Q. Can you locate the houses with respect to the plats of square 939, which have been introduced in evidence and marked "Exhibits 18 and 19"? A. Yes,

Q. Describe the location if you can, in terms of feet, giving the point of beginning at a given distance from the corner of the square? A. If you will allow me to make a suggestion, I think it would be easier to give the commencement from what was
188 known as ink lot three or pencil lot six: I commence at the north line of said lot; the houses then ran south, covering a frontage of ninety feet, there being six houses, each house covering sixteen feet front; then there is a ten foot alley, a sort of "T" alley, which I cannot accurately describe. The depth varies, being from one hundred and five to one hundred and fifteen feet; there is one one hundred and fifteen feet, because there is a little step here, that is the alley stops there.

Q. Can you describe that lot by the use of "Exhibit 19," known as John H. Walter's sub-division? A. I describe it by metes and bounds thereon as lots 48, 49, 50, 51 52 and 53 of John H. Walter's sub-division, as shown by "Exhibit 19." The lot referred to as being 115 feet deep appears on Exhibit 19 as lot fifty-three.

Q. Mr. Acker, are you familiar with the values of land—I mean the real estate as contra-distinguished from the improvements—in this part of the District of Columbia? A. In a general way; not specially.

Q. You are a real estate agent, are you not, as well as a lawyer? A. Yes, sir.

Q. State, as near as you can, the value of land embraced within these lots at the present time?

WITNESS: You refer to the lots covered by the houses—lots forty-eight to fifty-three of Walter's sub-division?

Mr. LAMAR: Yes, sir.

A. I should say the lots were worth about sixty cents a foot.

Q. What would that amount to for the entire land—the price?

Mr. DARLINGTON: That is a mere matter of computation.

189 A. Well, lot No. 53, on that basis, would be worth eleven hundred and four dollars; lot fifty-two, eleven hundred dollars; lot fifty-one eleven hundred dollars; and lots 49 and 48 the same; lot fifty also the same. That is in the rough, Mr. Lamar; I would say the average is about eleven hundred dollars.

Q. That is sixty-six hundred dollars for the whole? A. Yes, sir—about sixty-five hundred, say.

Q. That is the value as to the present time. A. Yes, sir.

Q. What was the value of these lots at the time of the erection of houses—the value of the land? A. Well, I should regard them as worth more at that time—probably worth about seventy-five cents at that time.

Q. Mr. Acker, after Mr. Bradshaw spoke to you in regard to the pendency of these ejectment suits, state whether or not you examined the records and ascertained what lands were embraced in the ejectment suits? A. I think lots—I speak of ink number lots—one, two, three and twenty, or pencil lots No. 3, 4, 5, and 6.

Q. Do you say the equity suit? A. No, the ejectment suit—I qualify my answer somewhat as to the ejectment suit. There were two suits in regard to them; the original suit covered ink No. one or pencil No. 4; the amended suit covered ink Nos. 1, 2, 3, and 20, or pencil numbers three, four, five and six.

Q. What was the comparative value at that time of the property embraced in these proceedings to that embraced within the ejectment suit but not involved in these proceedings?

Mr. DARLINGTON: Objected to as immaterial to any matter involved in this case. This in addition to my general objection.

190 Q. (Continuing:) I mean the last suit—the last ejectment suit—the amended suit. A. The first ejectment suit was on lot 1, the corner lot, and of course the corner is more valuable than the interior lots, on account of it being the corner lot and it being of less depth. My estimate for the others was sixty cents, and I should say that would be worth one dollar and a quarter a foot—I mean for the whole depth of ink lot one, which is seventy-five feet.

Q. State what the corparative value of the balance was? A. Ink No. 20, I should value at seventy-five cents a foot.

Q. As of what date? A. As of the date of the time of this suit. Lot two being irregular in depth—part of it I value at one dollar a

foot—that is the part that is fifty-seven feet deep; the part which is a hundred and fifteen feet deep I value at seventy-five cents.

Q. As of the present time or in 1893, '4 or '5? A. At the time the suit was filed.

Q. What suit do you mean? A. I mean in 1893.

Q. Then, Mr. Acker, the value in 1893 or '4 of the whole land embraced in the ejectment suits was what? A. Well, I can't answer that in the rough, because I give different figures for different lots. I would let my former answer stand. I base the value on the depth of the lot—a deep lot is not as valuable as a shallow one per foot.

Q. As to the value—what would be the proportion between the value of the land embraced in the present equity proceeding
191 and the value of all the land embraced within the ejectment suit as amended?

Mr. DARLINGTON: Let it be understood that my objection applies to this entire line of examination, each question and each answer.

NOTE.—It it agreed between counsel that Mr. Darlington's objection may so apply.

A. The lots covered by the houses embrace practically one-half of the ground; I should say that the ratio of the value would be forty-five per cent. of the full value of the ground covered by the houses to the other—fifty-five per cent. being the amount of the remaining land, and forty-five per cent. of the whole value the value of the part covered by the houses.

Q. Mr. Acker, were you present at the trial of these ejectment suits? A. Yes, sir.

Q. State whether or not any testimony was allowed to be adduced as to the existence of the improvements in this suit in controversy.

Mr. DARLINGTON: Objected to as irrelevant and immaterial; wholly foreign to any issue in the case—this in addition to my general objection.

A. No testimony on that line was admitted.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Acker, were you present at the trial of these ejectment suits? A. Yes, sir; I represented the New South Building and Loan Association, as one of its attorneys.

Q. Who were the other attorneys in the case? A. Mr. William F. Mattingly, Mr. William John Miller and Mr. John Ridout.

Q. Whom did Mr. Mattingly and Mr. Miller represent?

Mr. LAMAR: I object to this as not being proper cross-
192 examination and because the record is the best evidence as to whom they represented.

A. The association.

Q. Whom did Mr. Ridout represent?

Mr. LAMAR: I make the same objection.

A. He represented Mr. Bradshaw.

Mr. DARLINGTON: In order to save time I agree that counsel may have the *the* benefit of every possible objection to each question and the answer thereto, at the hearing, the same as if such objections had been made upon the record.

Q. You say that original suit covered only lot one—when was that suit filed? A. In 1891, I believe.

Q. What time in 1891? A. I think it was in the spring of the year.

Q. And when was this amendment made? A. In 1893—March 1893.

Q. Was that the second or the third amendment? A. The second.

Q. When was the third filed? A. In 1896.

Q. Did you ever sell any ground in square No. 939? A. No, sir.

Q. How near to square 939 is the nearest sale you ever affected or had knowledge of? A. Not within a radius of three or four squares.

Q. Well, what was the nearest? A. I should say five squares off.

193 Q. In what square? A. The square between E and F and 6th and 7th, N. E.

Q. And about what time was that sale made? A. That was made about seven years ago.

Q. About 1895? A. Between '93 and '95.

Q. What was the next nearest sale you ever made to this property? A. On F near the corner of 8th northeast.

Q. Neither of those sales are of the same class of property in square 939? A. Well, they are better properties.

Q. Square 939 is two squares from East Capitol street, is it not? A. About two and a half squares.

Q. Square 939 is bounded on the south by B street, is it not? A. Yes, sir.

Q. And B street is two squares from East Capitol street? A. Yes, sir.

Q. When did you first see Exhibit No. 1? A. That was turned over to me by Mr. Brevard after I had finished the examination of this title.

Q. About when was that? A. In 1893—November, 1893.

Q. You observed in that paper, did you not, the statement that $12,000 had been refused for these lots in 1892? A. I never saw this paper to examine into that matter; I had nothing to do with it.

Q. You see in this same paper that your appraisement com-
194 mittee valued them as worth ten thousand dollars, do you not?
A. I give you simply my own opinion; that might be theirs.

Q. What was your connection at that time with the association? A. It is rather problematical what my connection was; I never attended a meeting of the local board. Mr. Brevard requested me to become the local attorney of this association and I told him

that if, after proper examination, I found the association intended to do an active business in this District I had no objection to acting in that capacity. He left me with a certificate of stock which I never paid for and which I subsequently returned to the company. My past experience with national building and loan associations had been that they only formed these local boards for the sale of stock.

Q. I am asking you what your relations were? A. And I am trying to tell you; I acted as their attorney—you mean now the New South Building and Loan Association?

Q. Was there any other? A. There was this local board.

Q. Tell us your relations with each of them—the New South Building and Loan Association and the local board? A. I represented the New South Building and Loan Association from the time of bringing down this title, which was May 22, 1893, down to the final termination of the ejectment suits.

Q. What were your relations with what you call the local board? A. I don't think I had any.

Q. Do you know Mr. John H. Walter? A. No.

Q. Neither personally nor by reputation? A. By reputation, not personally.

195 Q. How did you come to know him by reputation? A. I knew where his office was on F street, and the general reputation of Mr. Walter of being connected with the real estate business. I knew nothing adverse to him.

Q. You knew, did you not, that his real estate business consisted solely of buying what we call proprietary titles of property to which tax titles had been running for many years? A. No, I can't say I did.

Q. What do you mean by that expression? A. You asked me if I know a thing—if I knew that, and I say I did not.

Q. Did you not know that he had, under this alleged Walker title, taken title to two entire squares and several hundred original lots in the city of Washington; that that was common newspaper talk? A. I can't say—I mean, I don't know personally.

Q. Did you not also know that he had acquired an alleged ancient title and had under a red flag sold out St. Aloysius church, Gonzaga college and some forty dwelling houses in those squares for three hundred dollars? A. No, sir; I did not.

Q. You knew nothing of that? A. No, sir.

Q. And you had been an attorney at law and real estate agent how long? A. Since 1885.

196 Q. In your capacity as a real estate agent, had you ever known Mr. Walter to be connected with any real estate transactions, except those relative to these very old titles, for which he claimed to have gotten deeds from the heirs of persons long since deceased? A. I can't say that I did or did not; I know very little of John H. Walter.

Q. What did you know of the Walker title at the date to which you refer, or at any date? A. I know a good deal more now than I did then.

Q. In 1893, what did you know of the Walker title? A. In 1893 I got the general information that the Walker title had been perfected.

Q. You knew, did you not, that George Walker had acquired a large number of squares and lots in the original laying out and division of the city—you knew that as a matter of general reputation, did you not? A. Yes, as a matter of general reputation.

Q. And as a like matter of general reputation, you knew that he had gone back to England and left them all here undisposed of? A. Yes, sir.

Q. And you knew that these properties had been sold for taxes and tax claimants had arisen for them? A. I didn't know about all of them; some had.

Q. And you knew as a matter of general reputation that from the time George Walker left the country and abandoned these lands, down to the time when Mr. Walter claimed to have acquired title, neither George Walker nor his heirs had been in any way heard of in connection with that property? And that no one representing them had appeared? A. I can't say that.

197 Q. Was it not a matter of common knowledge with all lawyers? A. We knew, of course, that the Walkers themselves were not here.

Q. Was it not known that no one representing them had ever appeared here until Mr. Walter claimed to have acquired these titles? A. I believe J. Augustus Taylor came over to represent them. He represented them with Mr. Walter.

Q. But you knew that this Walker title had been in abeyance till resurrected by Mr. Walter, either with or without Mr. Taylor for a century? A. I knew that it had for a long time.

Q. How long had you known Mr. Aughinbaugh? A. I never met him; I don't know him at all.

Q. Had you known him either personally or by reputation as a member of the bar? A. I understood he was a member of the bar.

Q. In what way did you obtain that information? A. From the agent—the agent of the association.

Q. This Mr. Brevar? A. Yes, sir.

Q. But in your experience of eight years, as a member of the bar, you had not heard of him as a member of the bar? A. No, sir.

Q. You know then that he must have been practically unkown as a member of the bar? A. No, I could not say that, because I might not have come across him personally. There are certain members of the bar that I might hear of but didn't meet; possibly I might not come across them, and some of them I might not hear of.

198 Q. After being a member of the bar for eight years, you knew pretty much all the members of the bar? A. I didn't know all of them.

Q. These ejectment trials were very protracted and costly trials covering a long period of time? A. Yes, sir.

Q. Several weeks? A. Yes, sir.

Q. The testimony was all taken down by a stenographer at very heavy cost to the parties, was it not? A. Yes, sir.

Q. And there were four counsel on behalf of the defendants in the suit and two counsel on behalf of the plaintiffs? A. Yes, sir.

Q. State on the records who were the attorneys for the plaintiffs? A. Messrs. Darlington and Worthington.

Q. Mr. A. S. Worthington? A. Yes, sir.

Q. You were aware of the fact that there had been a trial before that or an attempted trial, which resulted in the withdrawal of a juror? A. Yes, sir.

Q. That was also a very protracted affair, was it not? A. That lasted about ten days.

Q. Are you correct, Mr. Acker, in your recollection that you first learned of these suits from Mr. Bradshaw? A. I learned of them from Mr. Bradshaw.

Q. I read from your letter, Exhibit No. 9: "On examination of title there were several suits *versus* Bradshaw and others at
199 law which were not reported in Mr. Aughinbaugh's abstract," was not that so? A. No; I can explain that letter very easily. Mr. Bradshaw informed me of these suits and I had another case to examine and went down and examined these suits at the same time.

Q. Your letter seems to state that you discovered these ejectment suits while you were examining another title? A. Well, my letter is not very clear; my statement under oath is the proper one.

Q. You state in this letter that Bradshaw informed you that he had no knowledge of the pendency of these suits until after the houses were finished? A. Yes, that is what he told me.

Q. You examined these suits before you wrote the letter? A. Yes, sir.

Q. When were these houses finished? A. I can't tell you that.

Mr. LAMAR: You said they were finished in April, 1894.

Q. Your letter states that "in looking over the matter carefully, I find that the Ashleys claim under an old tax title and also claim adverse possession"—that was after you had examined the ejectment suit? A. After examination of the ejectment suit.

Q. That was also the statement set up in the equity suit? A. Yes, sir.

Q. You knew then when you wrote this letter that Bradshaw had not told the truth? A. I was not expressing any opinion as to that.

Q. But, I am asking you if you did not know that he had not told you the truth? A. I state now that I didn't attach much weight to what he told me at the time.

200 Q. In the examination of the ejectment suits you found that he had been served with process, had appeared by counsel and that issue had been joined? A. Yes, sir.

Q. How long did you continue to act as attorney for the building association in those suits? A. Down till the final termination of them.

Q. Who furnished the appeal bond, first on the appeal from the supreme court of the District of Columbia to the Court of Appeals,

and then on the appeal from the Court of Appeals to the Supreme Court of the United States? A. I obtained the bond.

Q. Acting for the building association or in its interest? A. Yes, sir.

Q. When did these ejectment suits finally terminate? A. A little over a year ago.

Q. Some time in 1901? A. I think so.

Q. Reference is made in your direct examination to a power of attorney—Exhibit No. 10—did you act under that power of attorney? A. Yes, sir.

Q. In what way? A. In taking charge of the property, collecting the rents, paying the taxes and insurance and in a general way carrying out the powers conferred upon me.

Q. That, I assume, was in the interest of the building association also? A. Yes, sir; of the building association.

Q. I observe that under this power of attorney you were to
201 pay all taxes, general and special, etc.? did you do that? A. I did up to a certain time.

Q. Up to when? A. Up to the time the suit was decided in favor of the Ashley heirs.

Q. When was that? A. I can't tell the exact date.

Q. This power of attorney is dated in 1894—did you pay any taxes after 1895? A. I think so; after the date of the jury's verdict I did not, but you will find them paid up to that date.

Q. But as soon as the jury brought in their adverse verdict, you decided to stop paying taxes? A. Yes, sir.

Q. You still collected the rents, did you not? A. Yes, sir.

Q. You still collected the rents and kept the defendants out of possession by means of a supersedeas bond, so that you could collect the rents? A. I would not answer that in the affirmative at all; it was not done in order to collect the rents, but to have a higher court pass upon the case.

Q. But you did collect the rents and didn't pay the taxes? A. Yes, but I spent a good deal of money for repairs.

Q. Did you make any repairs? A. Yes, sir; that was done right down to the time the property was turned over to a representative of the Ashleys.

Q. Those were repairs that you had to make to keep the tenants in, were they not, so you could collect rent? A. They were
202 made to keep the tenants in and for the preservation of the property, also.

Q. Can you specify any repairs that were made for the preservation of the property, as distinguished from repairs necessary to retain the tenants? A. Painting the roofs—we did that.

Q. Please give, before you sign your deposition—the date of your last payment for painting the roofs and to whom it was made? A. I will.

Q. Was not the painting of the roofs because of leaks? A. Well, the leaks called attention to the condition of the roofs and the necessity for painting them.

Q. And then you did it to stop the leaks and keep the tenants in, did you not? A. Well, you might put it that way.

Q. You stated that you received no notice from the Ashleys of their claim to the property, or of any objection on their part to the improvements being placed thereon—did you know the Ashleys? A. No.

Q. Were they acquainted with you? A. No.

Q. Do you know of any way in which they could have known that you had any connection with the matter of this property? A. . . unless they inquired of the workmen on the building—I presume the workmen knew I was handling the money.

Q. Did any of the Ashleys know any of the workmen on the buildings? A. That I don't know.

Q. In other words the defendants were entire strangers to you and strangers to your connection with this transaction, so far as
203 you know? A. So far as I know.

Q. Mr. Acker, why didn't you give your client the building association notice of this suit before disbursing the money? A. I didn't know of it.

Q. You were a resident of the District of Columbia and a member of the bar, were you not? A. Yes, sir.

Q. Didn't you have constructive notice of the suit? A. From the time I examined that title I had no notice of the ejectment suit. I don't know of every suit that is brought; had I known of this suit, I would, of course, have advised them.

Q. You know, however, that the law is that everybody had constructive notice of that suit? A. It is perfectly absurd to try to make me know of every suit that is brought.

Q. I quite agree with you—in other words there is the very great difference between constructive notice and actual notice, and you think it would be perfectly absurd to charge you with actual notice? A. I think it would be.

Q. Then even though you did not know actually of the bringing of that ejectment suit, still it might be on the record against Bradshaw? A. Yes, sir.

Q. As a matter of fact did you know of the ejectment suit till September 1894. A. I knew it was pending there against original lot one; I knew that when I examined the title.

Q. You knew there was an ejectment suit pending? A. Yes—against original lot one.

204 Q. How did you know that? A. The memorandum book of ejectments in the clerk's office shows that.

Q. What book? A. Book A I would call it.

Q. Did you examine that book? A. Of course I did.

Q. When was that? A. Between May 26th, and November 1st, 1893.

Q. Did this same record in November, 1893, show these amendments bringing in these additional lots? A. No sir.

Q. Have you examined it to see? A. It was not on the same book; not on the same memorandum book; there is only one reference to the original suit.

Q. What is the book you have reference to? A. The memorandum book, as I would terms it, as to ejectment suits.

Q. You mean do you, that the clerk's office keeps a separate book as to ejectment suits? A. Yes, sir.

Q. And you examined that in November 1893? A. Yes—no, not in November, but between the time, May 26th and November 1st, when I made this examination.

Q. Well, you brought your examination down to November 1st, 1893, did you not? A. Yes, sir.

Q. Did you content yourself with looking at this memorandum book without looking at the original papers? A. It was not necessary for me to look at the papers; I reported to the associa-
205 tion everything affecting the title of this property during the period covered by my examination; I merely continued this title.

Q. I understand that you did look for and find one ejectment suit against Bradshaw and that this suit covered lot 1? A. I simply say it covered lot one, because the memorandum book shows it.

Q. But, in this examination of this title, it did occur to you that there might be ejectment suits and you did look at this memorandum book in the clerk's office as a matter of fact? A. Of course, I was going to find out whether there were any suits at law or in equity between those dates.

Q. And you did find pending between those dates this law suit, which you say involved lot 1? A. Yes, sir, lot one of the ink numbers.

Q. But you didn't look at the papers to see whether it covered more than that? A. Certainly not.

Q. This book you speak of is not a book provided for by any law that you know of, is it? A. Not that I am aware of.

Q. Just a book which the clerk keeps for the accommodation and convenience of the members of the bar and of the public? A. I presume so.

Q. That is a mere memorandum of the clerk's office? A. I should call it that.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Acker, in this index of ejectment suits that you refer to state whether or not that memorandum does give the names of the parties to the suit?

206 Mr. DARLINGTON: Objected to. The book is the best evidence of its contents.

A. My recollection is that it does not.

Q. I believe counsel has asked you whether you have examined that book since—state whether or not as a matter of fact this general index shows to this day the result of the amendments in adding the other property to the suit?

Mr. DARLINGTON: Objected to as leading in addition to the grounds heretofore stated.

A. It does not.

Q. Mr. Acker, state where the indexes of the ejectment suits are kept in the clerk's office? A. In the clerk's office in the law office on the right hand side in a shelf.

Q. About how near the judgment records—the indexes of judgments A. Right near, within a few feet.

Q. State whether or not these books are recognized and used by attorneys and others in the examination of titles?

Mr. DARLINGTON: I object, on the ground that the custom, if it be a custom, to use mere memorandum books instead of consulting the original authorities, could not effect the rights of the defendants.

A. I have seen them used—I should say it was.

Q. State whether it was the custom in 1893, when you examined this title? A. I should say "Yes."

Q. Mr. Acker, in acting under the power of attorney from Bradshaw, you collected the rent for the property, did you? A. Yes, sir.

Q. As to the matter of expenditures in the way of improvements on the houses, state whether or not you used your own judg-
207 ment in the premises? A. I dealt with that property, just as if it had been my own, caring for the property in every way, as if it had been mine.

Q. You used your own judgment in consonance with the trusts assumed by you under the power of attorney from Bradshaw? A. Yes, sir.

Q. State whether or not the matter of the discontinuance of the payment of taxes was as a result of your best judgment of what should be done to conserve the funds in your hands? A. That is true.

Q. Did you counsel with the association, as you remember, on this point? A. I think not; I am not certain about that.

Q. State whether or not, under your construction of this power of attorney, as a matter of fact, you felt authorized to pay for legal assistance as you desired to protect the interest intrusted to your charge?

Mr. DARLINGTON: Objected to; I submit that how he felt is immaterial and irrelevant.

A. Whatever I did was after consultation with the association. As to the matter of counsel and the payment of expenses, it was well understood what I was to do with the funds and they knew what I was doing.

Q. Then when you disbursed this retaining fee of two hundred and fifty dollars to Mr. Mattingly did they know it? A. Yes, sir.

Q. And the balance of these attorneys' fees that were paid out of this fund? A. Yes, sir.

Q. As a matter of fact, the service rendered by Mr. Mat-
208 tingly was in the interest of Bradshaw, was it not? A. Of course, it was in the interest of all parties.

Q. Was Mr. Mattingly permitted, or in a position, to defend the association in its own name, or did he appear as associate counsel with Mr. Ridout? A. In the only way he could appear—as associate counsel with Mr. Ridout.

Q. State whether or not the New South Building and Loan Association in said suit were brought before the court in the trial of the cause to the extent of their having a loan on these houses? A. They did not and could not get before the court or jury.

Q. Do you pretend to know, or did you pretend to know, in 1893, all the reputable members of the bar of the District of Columbia, and would you have felt justified in refusing to continue a title signed by a member of the bar whom you did not know? A. Certainly I would not; I don't know all of them, and I knew nothing derogatory to Mr. Aughinbaugh.

Q. You have been interrogated as to constructive notice in regard to what cases are in court—state whether or not if you were the owner or claimed to be the owner of property as the Ashleys were claiming to be and saw six houses being constructed thereon by a party admittedly irresponsible, would you inquire and endeavor to find out who was recognized as in authority and disbursing the money—state whether or not you would?

Mr. DARLINGTON: I object. I have passed by a great many questions but this one is so utterly inadmissible and so contrary to all the rules of evidence that I give notice to counsel that I shall move to strike it out at the hearing, as well as any answer thereto.

A. I should think it would be my duty to inquire who was furnishing the money.

209 Q. Look at Exhibit No. 4 and see if you can refresh your memory more accurately as to the time you first became connected with this local board of this association? A. In a measure I became connected with it May 26, 1893.

Q. You subscribed to stock in the association, didn't you? A. No; as I stated before, that subscription was conditional, and as a matter of fact I never paid for the stock and returned it to the association.

Q. But in this transaction you acted in the papers in the place of what is known as the local attorney for the building association, did you not?

Mr. DARLINGTON: Objected to as leading and calling for the opinion of witness and not the fact. The witness has testified throughout the case that he acted as the attorney for the New South Building and Loan Association.

A. I presume that is true.

Recross examination.

By Mr. DARLINGTON:

Q. Mr. Acker, do you now say that you consider that you acted as attorney for the local board? A. No, I don't say that; I don't think I did.

Q. The local board had no interest in it that you know of? A. No, sir; I didn't know of the existence of a local board, except by hearsay.

By Mr. LAMAR: Do you mean that you haven't attended meeting of the local board?

A. I never attended the meeting; I never had any invitation to attend.

By Mr. DARLINGTON: Of whom would you have consid-
210 ered it your duty to inquire as to who was furnishing the money for these buildings?

A. A problematical question was asked me; I simply answered my own impression. I would probably have inquired of the builder where he got his money from.

Q. Why would you have done that? A. Simply, because if I claimed to be the owner of a piece of property and held it by adverse possession and somebody was building on it, I would have felt it my duty to inquire.

Q. Duty to whom? A. To the lender of the money—the person furnishing the money for the buildings.

Q. Do you mean to say that Bradshaw was known at that time to be irresponsible? A. I don't know that I can say that; he had a home there on the corner, but I don't suppose he was understood to be worth twenty thousand dollars.

Q. You knew that he had a house there? A. I knew that.

Q. And you knew that he also claimed to be the owner of this property and to have paid for it nearly ten thousand dollars. A. Yes, sir.

Q. If, as you state, you were in possession of this property and collecting the rents, do you know why Mr. Mattingly could not have appeared on behalf of you as the party in possession? A. He did act under our request.

Q. But you have testified that he could only appear for Bradshaw, as associate counsel with Mr. Ridout—I now ask you if you were in possession at the time of the trial, whether there was any rea-
211 son why he could not appear for you in your own name? A. We were not parties of record.

Q. Do you know of any reason why you could not apply to the court for leave to intervene and become parties to the record? A. No, I don't know of any reason.

Q. That would have been good practice, would it not? A. It might or it might not be.

Q. You stated that your recollection is that this memorandum book or index of ejectment suits does not give the names of the parties to the suit? A. That is true.

Q. How, then, did you find out when you were making this examination or continuation of the title and your attention was called to this suit over lot one that it related to Bradshaw, as you have testified you did know? A. Well, that was a suit as to original lot one in square 939, and I presumed that it related to Bradshaw.

Q. You presumed at the time that it related to Bradshaw? A. Yes, sir.

Q. So that you had just as much notice in this instance as if the index had named Bradshaw? A. No, it would have been better notice if it had named Bradshaw.

Q. But you assumed from the lot and square that it was a suit against Bradshaw? A. I knew that it was there; I didn't know positively that it was against Bradshaw.

Q. Can you name any title examiner or lawyer who uses these memorandum books or indexes of ejectments as sufficient evidence of the pendency of ejectment suits without examining the origi-
212 nal papers? A. No, I can't give any name; I presume there are such.

Q. Do you know of any instance that any title examiner or lawyer relied on the examination of these memorandum books or indexes alone, without going to the original sources of information, the papers themselves? A. Well, I have seen them handled by attorneys.

Q. Did you ever know or hear of any-one having used them exclusively? A. I can't say.

By Mr. LAMAR:

Q. You refreshed your memory as to that book, didn't you, just before going on the stand this evening? A. Yes, sir.

Q. Can you say that when you made that continuation of title—you were examining it as to the particular land embraced in these particular equity proceedings, were you not?

Mr. DARLINGTON: I suggest that the question could be made a little less leading.

WITNESS: You mean in the continuation of title?

Mr. LAMAR: Yes, sir.

A. I was examining as to the lots known as forty-eight to fifty-three, John H. Walter's subdivision of this square.

Q. Were they embraced in original lot one? A. Part of it was in the sub-division—that sub-division embraced parts of lots one, two, three and twenty, ink numbers—there were four lots there.

Q. Was lot one embraced within the continuation that you made? A. No, sir.

Q. State whether or not you have any independent recol-
213 lection as to seeing the notice of the ejectment suit with regard to lot one, in making said continuation in 1893? A. I didn't pay any particular attention to it, because it did not cover the ground embraced in the continuation.

Q. Mr. Acker, state whether or not you knew from such examina-

tion that there was any ejectment suit pending against Mr. Bradshaw at that time. A. No.

By Mr. DARLINGTON:

Q. You knew that an ejectment suit over lot one was pending against him? A. I say I presumed it was against him; I didn't know.

Q. You knew that the equity suit, which had been dismissed, covered all the property, did you not? A. I did not examine the equity suit; I had the certificate of Mr. Aughinbaugh—he examined that—I did not, and I wrote the company that I was only making a continuation from the date of his examination.

Q. You read this certificate? A. Yes, sir.

Q. You knew then that this equity suit which had been dismissed covered all the property? A. Yes, from his say-so.

Q. You knew that in an ejectment suit, the declaration like that in any other law suit was liable to be amended, did you not? A. Yes, sir.

Q. I believe that to this day this index does not show these amendments. A. No, sir; not that book.

214 Q. The second index does so—shows the whole claim? A. Yes, sir.

Q. When, if you know, was this second index made? A. I don't know it as a matter of fact in this suit, but simply from other examinations.

Q. Was it in existence when you made your search in this cause? A. No.

Q. You would not regard this index as a safe basis for the examination of titles? A. Well, I should not say now that it was but it ought to be accurate.

By Mr. LAMAR:

Q. The second index to which you refer—does it refer to this property or to cases filed subsequent to this time? A. To cases filed subsequently.

Q. And the index relative to this property up to this time has not been modified? A. No, sir.

By Mr. DARLINGTON:

Q. These amendments were not a new suit, but simply entered in the old suit? A. You might class them that way.

Q. As a matter of fact, they were amendments in the old suit and not a new suit? A. Yes, sir.

Q. They appear in this second index? A. Yes, sir.

Q. Not simply as the record of a new suit, but only as an amendment of the suit which originally covered ink lot No. one? A.

215 It was an amendment of the original suit, but a new suit so far as this other property was concerned—practically so.

Q. They were made in the same suit, on the same docket, under the same law number—the same suit—merely an amendment to the then pending suit? A. Yes, sir.

By Mr. LAMAR:

Q. You have reference to the amendments to the suit brought prior to the time that this continuation was made? A. Yes, sir.

Q. State whether or not—look at Exhibit No. 4, and state whether or not Mr. Aughinbaugh's reference in this exhibit to the equity suit says anything about the pendency of any ejectment suit?

Mr. DARLINGTON: The paper speaks for itself.

A. It shows that this equity suit, cause No. 12,318, had been instituted by the heirs of Joseph R. Ashley in March, 1890, claiming to be the owners of the property, although the record showed no title in the said Joseph R. Ashley when he was living or in said heirs after his death, that the proceeding was still pending and that the docket showed an undisposed of motion to dismiss the suit for want of prosecution.

Mr. DARLINGTON: Showing that Mr. Aughinbaugh had evidently examined the case and was familiar with the contents of the bill.

Q. The next continuation shows what? A. The dismissal of the equity suit, for want of prosecution, at complainant's cost, July 1, 1893.

By Mr. DARLINGTON: Without prejudice?

A. Yes, sir.

216 WASHINGTON, D. C., *May* 8, 1902.

Met pursuant to agreement.

Appearances: The same as before:

The following proceedings were had:

By Mr. LEE: I desire to make the following statement, which it is understood Mr. Darlington, counsel for defendants, will not object to, as to form, but to which he may have some other objection.

Mr. DARLINGTON: I am willing to have this statement go of record, objecting to it, however, as being incompetent as against defendants and without relevancy to any of the issues in the case.

Mr. LEE (states as follows): I have examined the files of the Evening Star newspaper, and find that in that paper on November 20, 1893, on the second page and in the column next to the rent column, under a dividing mark, and printed in the news column immediately next to the financial and commercial quotations, the following article; after a break and a line across the news column there is a heading "District Government," under which there are sub-headings in slightly smaller type. The fourth and last sub-head is building permits, and included therein is the following:

"Building.

"Building permits.

"The following building permits were issued to-day:

Aaron Bradshaw, 215 to 225, 9th street, northeast, to cost $24,000.

T. D. Daly, 127 H street, northeast, to cost $1300.

217 This ends the article "District Government;" the next article being "Baltimore Markets."

I also find in the files of the Washington Post, as having been printed in the paper issued Tuesday, November 21, 1893, at the bottom of the second column, on the 8th page, being a news column, the following:

District Building Notes.

* * * * * * *

"Building permits were issued yesterday as follows:—

"Aaron Bradshaw, six brick dwellings at 215 to 225 Ninth street, northeast, $24,000.

* * * * * * *

Thereupon RICHARD M. EVANS a witness of competent age, produced on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LAMAR:

Q. Mr. Evans, please state your name, residence and occupation and how long you have been so employed. A. My name is Richard M. Evans; I live at No. 945 E street, southwest; occupation, assistant inspector of buildings, and have been so employed since November 1, 1890.

Q. In the fall of 1893 and up to 1894, April, 1894, state whether or not you were so employed? A. I do not know that I can state with positiveness the time that you mentioned, but according to the permits issued by our department for certain buildings within the time mentioned within my district, I did go around to all the

218 buildings as near as I could. Among the number, according to this permit which I have here——

Q. (Interposing.) Will you state what permit it is and when issued? A. The application is dated November 21, 1893. It was for six brick dwellings, 215 to 225, 9th street, N. E., lots 48 to 53, square 939.

Q. Who was the applicant? A. Well, that I do not know; it is signed by Aaron Bradshaw, 901 C street, northeast.

Q. You have in your hand the original record? A. I have, yes, sir.

Q. Coming to your custody as such official? A. Yes, sir.

Q. Will you kindly look at the paper I hand you and state whether or not that is a copy of the original record? A. Yes, sir; I know that to be a copy of the original record.

Mr. LAMAR: This paper is offered in evidence.

Mr. DARLINGTON: I object to it on the same ground I have objected to so many papers in this case, it being without the slightest materiality, competency or relevancy against the defendants.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 31."

Q. Will you state whether or not in the performance of your duties as assistant building inspector at the time, you visited these buildings from time to time during their erection? A. I did.

Q. State whether or not in construction they conformed to the building regulations? A. To the best of my knowledge and belief they did. Of course, I couldn't get around there very often,
219 but when I got there, as far as I know the houses were constructed according to the regulations of the Government.

Q. State about how often you visited these buildings during their construction. A. That would be a matter of impossibility, Mr. Lamar; I don't remember. Our records now are quite different from what they were then; we can now tell you every day and almost the hour.

Q. Can you say that you were there once or twice or three times or how many times. A. I remember on two occasions particularly. I had an interview or talk there with Mr. Bradshaw. I may have gone there a dozen times.

Q. You saw Mr. Bradshaw on the ground? A. On the premises, yes, sir.

Q. State what, if anything, Mr. Bradshaw said to you with regard to the ownership of the buildings?

Mr. DARLINGTON: Let it be agreed between counsel that the general objection taken on behalf of the defendants to questions of this character and to any answers thereto. shall apply without being reiterated.

Mr. LAMAR: That is satisfactory and I agree.

A. Well, I can't say positively that Mr. Bradshaw ever told me he was the owner, but I recognized him as the owner.

Q. State whether or not on any of your visits there, or at any time during the construction of these buildings James A. Ashley, Mary A. Breckenridge, Henry F. Breckenridge, Mary M. Ashley, Nehemiah B. Ashley, Hyden H. Ashley, Ralph B. Ashley, Joseph R. Beardsley or Sarah E. Beardsley or any one acting for or on behalf of such parties, gave you any notice or conveyed to you the information that they were claiming any part of the land on
220 which the houses were constructed? A. To the best of my knowledge and belief I never heard the names mentioned before.

Q. Was there any notice to you from any source that there was a dispute over this land? A. No, sir.

Q. Who were the building inspectors during this time? A. Mr. Thomas B. Entwistle——

Q. (Interposing.) Where is Mr. Entwistle, now? A. He has been dead since 1894.

Q. After his death, who? A. Mr. Thomas B. Brady.

Q. State whether or not Mr. Brady is living. A. He is dead.

Q. State whether or not in the performance of your duties as assistant building inspector, the northeast part of the city was within, at that time, your inspection district? A. Yes, sir.

Q. Did the building inspector notify you of any adverse claim to this property? A. Not to my knowledge.

Q. Had he done so would you not recall it? A. Well, the probabilities are that I would; it might have made an impression on my mind in such a way that I might have remembered it.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Evans do you know anything about a man named James T. Childs? A. No, sir.

Q. Do you know who furnished the brick for these build-
221 ings? A. I might have known at the time, but I do not know now.

Q. When you say you recognized Bradshaw as owner, do you mean you took it for granted he was owner because he was building the houses? A. On account of his name being shown on our records as owner—of course we accepted that.

Q. Your office doesn't try titles to land? A. No, sir.

Q. Had you or the building inspectors' office have anything to do with the people who claimed title to these lots? A. No, sir.

Q. Had you anything to do with receiving notice or obtaining notice where people were claiming title to ground that other people were building on? A. No, sir.

Q. That was wholly out of your province? A. If we issued a permit to build on lot one and they built on lot two it was their own fault.

Q. I suppose then, as it is now, the force of the building inspector's office was such that it could not undertake to supervise the actual construction of buildings to any extent? A. No, sir; we hadn't force enough.

Redirect examination.

By Mr. LAMAR:

Q. If there is a dispute as to ownership and a permit is sought what course do you pursue? A. Well, that is *is* question entirely out of our department. We tell them they will have to adjust that between themselves.

Q. Do you give a permit to two parties who are applying for it at the same time—do you choose between the parties when both
222 are appearing before you, each claiming the land? A. I never saw a case of that kind in the office. The nearest to that is a case that happened, I think, this morning, where a man had leased a piece of ground for a number of years. The party leasing the ground wanted to build a house on it, and the question was put to me how the papers should be made out, and I suggested to take

the owners of both the ground and the proposed building. Then we got them as joint owners of the property.

Q. Suppose the owner would not have agreed to sign, what would you have done?

Mr. DARLINGTON: I object on the ground that this is a hypothetical catechism, which cannot affect this case, in addition to my general objection.

WITNESS: If he didn't agree to sign the application—do you mean the owner of the ground? Somebody would have to sign before the permit could issue.

Q. Then you couldn't issue to both of them unless both signed, could you? A. No, the application would be signed jointly.

Q. Then, they would sign jointly. A. Or a representative would sign for them.

Q. Then, where there is a dispute over property and both parties do not agree about the permit, the permit would not be issued?

Mr. DARLINGTON: I object, the witness has already stated that no such case has ever arisen in the office.

223 A. I do not know but what they would have to go outside of the office to settle that trouble; we could never settle it.

224 DAVID W. STOCKSTILL.

Direct examination.

By Mr. LAMAR:

Q. State your name, residence and business? A. David W. Stockstill; business, sheet metal worker; residence, 1711 Pennsylvania avenue, northwest, Washington, D. C.

Q. State whether or not you did any work on certain buildings constructed on lots near the corner of B and 9th streets, northeast, in the year 1893–1894, fall of '94 and spring of '93? A. I gave an estimate on the galvanized iron work on the six houses on the eleventh of December, 1893.

Q. To whom? A. Aaron Bradshaw.

Q. Aaron Bradshaw? A. Aaron Bradshaw.

Q. State whether or not you did the galvanized iron work on these six buildings. A. I did the galvanized iron work on six houses; I gave him and estimate, and he awarded me the work. I did the work on the six houses.

Q. Did you supervise the galvanized iron work—were you the contractor? A. While my men were working there I was there.

Q. State whether or not during the placing of the galvanized iron work you saw Mr. Bradshaw on the premises? A. Oh, yes;

225 I generally saw him there superintending around the building.

Q. State whether or not you heard of any adverse claim to the land as against Bradshaw? A. No sir; I never heard anything to the contrary.

Q. Did you receive any notice from anybody against putting your material on the land? A. No sir; none.

Q. Did you receive any notice from James A. Ashley, Mary A. Breckenridge, Henry F. Beardsley, Hayden H. Ashley, Mary M. Ashley; Nehemiah B. Ashley, Ralph B. Ashley, Emma B. Jenkins, Joseph R. Beardsley, Sarah E. Beardsley that, they, or any of them, claimed this property? A. No sir; I never heard of any of them; I don't know any of the parties—I might have heard their names, but there was nothing said to me while the work was going on.

Q. When did you receive your last payment? A. April 12, 1894.

Q. From whom? A. Bradshaw.

Q. State whether or not Mr. Bradshaw advised you as to where the fund- were derived from with which to pay for the construction of the buildings A. He told me he got the money from a building association.

Q. I show now, what is marked in this case as "Exhibit No. 28," which purports to be a release of liens—state whether or not that is your signature to that paper? A. That is my signature.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Stockstill, you say you were there every day that
226 your men were working—I suppose you mean from time to time? A. Yes, sir; I didn't stay all the time. I would see that everything was going right and then I would go away.

Q. Do you know who did the brick work? A. I did at the time, but I can't tell you now.

Q. Was it a man by the name of Childs? A. I don't think Childs did the brick work; he may have furnished the brick; he may have done the work—I didn't pay any attention to that part.

Q. I suppose you were not concerning yourself as to who did the brick work or who held title to the land? A. No sir.

Q. You didn't regard that as any part of your concern, so you got your money? A. I understood that Bradshaw owned the buildings and was putting up the buildings himself.

Q. You got that from him did you? A. Yes sir.

Redirect examination.

By Mr. LAMAR:

Q. You knew Mr. James T. Childs, did you? A. The old gentleman—yes, sir.

Q. Did you ever see him on the premises during the construction of these buildings? A. I am not sure but what I saw him there in his buggy—I would not like to be too positive about that—I knew the old gentleman very well.

Q. Do you know whether he is living now or not? A. No sir; he is not living.

227 Q. When did he die? A. I guess three or four years ago.

Q. Mr. Darlington asked you whether you had any interest in who owned the buildings—would you place material upon buildings unless the contractor therefor was believed by you to be the owner. A. Well, if I had not had the understanding that Mr. Bradshaw was the owner I would have been a little delicate in putting material there.

Q. Why? A. Him not being the owner, putting it there for somebody else, I wouldn't know where my pay was to come from; but his giving me to understand that he owned the buildings, of course I didn't care. He was putting the buildings there for himself, I understood.

Q. In this paper you release all liens—what did you release? A. He couldn't get his last payment from the building association, until he exhibited that paper, showing that the men who furnished material there and labor, were not claiming liens.

Q. What lien was it that you would have had? A. For the balance due us when we got through there.

Q. You understood it that you would not have a lien against a stranger on whose lands the buildings might have stood? A. I understood that my liens would have been against these buildings with Bradshaw owner.

Re-cross examination.

By Mr. DARLINGTON:

Q. If Bradshaw didn't own them or there was a mortgage ahead of your materials, then you wouldn't have a lien? A. No, sir.

228 Q. You made no examination to see if there was a good title? A. No, sir.

Q. Just took his word? A. Yes, sir.

229 Mr. LAMAR: At this point I will introduce three exhibits, being (1) a release from Arms and Drury to Lydia Hoagland; (2) deed from Lydia Hoagland to Leta M. Morse; (3) deed from Leta M. Morse to Aaron Bradshaw. These instruments appear on the back to have been recorded, and it is stipulated that they may be offered in evidence subject to all other——

Mr. DARLINGTON (interposing): May I ask counsel for what purpose these deeds are offered in evidence?

Mr. LAMAR: For the purpose of proving the allegations of the bill with regard to these deeds, specifically as in the bill set forth.

Mr. DARLINGTON: I don't want to stop now to read the bill. Will counsel state what allegation of the bill he made reference to?

Mr. LAMAR: They are introduced in support of the tenth paragraph of the bill, (hands Mr. Darlington the bill), as well as in support of any other parts of the bill to which the same may be pertinent.

Mr. DARLINGTON: I object to these papers, as showing no title in anybody, and as being incompetent for any purpose under the issues in this case. I waive proof of their execution, however, in the economy of time and at the request of counsel for complainant.

NOTE.—And the same are filed by the examiner, and marked respectively "Exhibit W. W. M. No. 32;" "Exhibit W. W. M. No. 33" and "Exhibit W. W. M. No. 34."

230 WASHINGTON, D. C., *May* 12, 1902.

Met, pursuant to agreement.

Appearances: The same as at last session.

AUGUST J. NEFF.

Direct examination.

By Mr. LAMAR:

Q. Please state your name and residence? A. August J. Neff; 915 East Capitol street, Washington, D. C.

Q. State your business? A. Tinning and heating.

Q. Were you in that business in the fall and winter of 1893 and the spring of 1894? A. Yes, sir.

Q. State whether or not you did any work on the buildings constructed on Ninth street northeast, above B street, on the land in controversy in this case? A. Six houses, yes, sir; on the east side of Ninth street, between B and C.

Q. For whom did you do the work? A. Aaron Bradshaw.

231 Q. Through whom, if any one, did you meet him in connection with the matter in the first place. A. A man by the name of Williams, I think; his first name I don't know; he is a brother-in-law of John H. Walter or the other Walters—I don't know his first name.

Q. With whom did you make your contract? A. With Bradshaw.

Q. During your work on those buildings, as such tinner, in connection with the construction of the houses, state whether or not you received any notice from any of the defendants to this suit, or from any one else to the effect that the property didn't belong to Mr. Bradshaw, or any notice against your placing the improvements on the property for Mr. Bradshaw? A. No, sir.

Mr. DARLINGTON: No cross-examination.

232 APPLETON P. CLARK, JR.

Direct examination.

By Mr. LAMAR:

Q. State your name and occupation. A. Appleton P. Clark Jr; architect.

Q. How long have you been an architect, Mr. Clark? A. Twelve or thirteen years.

Q. During such time where have you conducted such business? A. In Washington, D. C.

Q. As such architect, are you familiar with the cost of constructing buildings? A. Yes.

Q. Were you so, in November 1893 and April, 1894? A. Yes sir.

Q. Are you familiar with the deterioration of buildings after construction? A. Yes, sir.

Q. Mr. Clark, state whether or not you have examined a row of houses on Ninth street northeast, known as Nos. 215 to 225 Ninth street northeast. A. Yes, I have; I examined the houses Saturday.

Q. State whether or not you made any computation as to the value of these buildings at the present time and if so state what that value is? and how you come to the conclusion? A. I meas-
233 ured the houses and figured them at the proportionate rate which we usually allow for that class of houses, and I judge it would cost to build them, thirty-two hundred dollars.

Q. Now? A. Yes; now.

Q. Taking into consideration the fact that these buildings were constructed in the fall and winter of 1893 and the winter and spring of 1894, will you state, from your examination of the buildings themselves, what, in your judgment, as an expert, these buildings are worth, each, at the present time? A. Well, I should say, in the neighborhood of three thousand dollars.

Q. Each? A. Yes; each.

Q. Mr. Clark, judging by the value of labor and material in 1893, at the time the foundation for these houses was laid, will you state what, in your judgment, as an expert, it would have cost, in labor and material, to have brought those houses up to the point where the first floor joists were laid? A. I have gone over the figures and make the amount fourteen hundred and twenty-four dollars.

Q. Will you separate the items? A. There are forty-six thousand brick at fourteen dollars—six hundred and forty-four dollars; the stone ashler facing, $480; the excavation of foundation trenches, fifty dollars and the floor of joists two hundred and fifty dollars—fourteen hundred and twenty four dollars.

Q. In making this computation, you put brick at what per thousand? A. About seven dollars.

Cross-examination.

234 Cross-examination.

By Mr. DARLINGTON:

Q. You think it would cost about thirty-two hundred dollars apiece to build them now? A. Yes, sir.

Q. You were asked whether you were familiar with the deterioration, after construction, of houses, and answered that you were—what do you mean by the term? A. I mean the amount of repairs that would be necessary to bring the property into as good condition as when it was built, as near as could be.

Q. You have also stated that you have *have* figured the value of these buildings at the proportionate rate for that class of houses—what do you mean by that? A. In arriving at the cost of a house

approximately, from experience we know that a certain class of houses will cost so much per cubic foot; we take the cubic contents of the house and rate it at so much per foot.

Q. The cost varies according to the houses? A. Yes, sir.

Q. In what class do these structures belong? A. The medium class.

Q. They are cheap contract houses? A. They are medium class—of course they are not first class.

Q. What is the deterioration, per annum, of that class of houses? A. I don't know any particular rate; I don't fix the value in my mind in that way. I just simply look the houses over and judge what it would cost in repairs to put them in first class condition.

Q. Are these not that class of houses which are known as cheap contract buildings? A. Well; they are not first class.

235 Q. The material in them is of a very ordinary character, is it not? A. Some of it is good and some poor.

Q. As a whole, what would you say? A. I should say it is medium class.

Q. Are you unable to tell us what is the per cent. of deterioration per annum which would be expected from houses of that character? A. I do not know that I could say.

Q. Would it be less than five per cent. per annum? A. Yes, I should think so.

Q. Well, what would you say was the rate of deterioration per annum to be anticipated from houses of that character, built of that kind of material? A. I never figured it on a percentage and am unable to say.

Q. You know they do deteriorate? A. Oh, yes.

Q. You know that houses of that class nine or ten years old are not worth anything like what they would be new, do you not? A. Oh, there would be some deterioration, of course.

Q. And you are unable to give us any substantial light on that deterioration, in nine years? A. No; I could not say that I could figure it absolutely.

Q. Would it be three per cent. per annum? A. I do not think so.

Q. Wouldn't that be a very small estimate on it? A. No; I should think not.

Re-direct examination.

By Mr. LAMAR:

236 Q. Mr. Clark, in speaking of the depreciation, did you have in mind the appreciation in value of materials themselves from 1893 or 1894, to the present time? A. The value I put on the houses is what it would cost to build them now.

Q. What do you mean by deterioration? A. The costs of repairs necessary to put it in as good condition as such a house could be.

Q. State what is the character of the front of these buildings, Mr. Clark? A. They have a marble ashler face; this face in two of

them extends up to the top of the first story and the other four to the window sills of the first story and the balance of the fronts are pressed brick with galvanized iron and stone trimmings, and slate mansard roofs.

Q. What is the arrangement of the houses on the interior—the number of rooms as near as you can give it? A. There are six rooms and bath—two rooms on each floor.

Q. State whether or not there is a pantry? A. On the first floor there is a dining-room and pantry; second floor parlor and bed-room and on the third floor two bed-rooms and a bath-room.

Q. State how many water-closet arrangements there are in the houses? A. Two—one in the bath-room and one in the yard.

Q. State whether or not the one in the yard has water appliances? A. It has.

Q. State whether or not the cost of material has appreciated or depreciated since 1893? A. It has appreciated.

Q. State, as near as you can, the percentage of appreciation? A. Well, it varies with different classes of materials; in a general
237 way, I should say ten per cent.

Re-cross examination.

By Mr. DARLINGTON:

Q. You don't wish us to infer, do you, that the measure of deterioration of buildings from age, is measured by the cost of repair? A. No; not entirely.

Q. Nothing like it, is it? A. Well, that would depend entirely upon the building itself and the character of the work; some buildings might, of course, depreciate a great deal and others very little.

Q. You can't make a new house out of an old one can you, by any amount of repairs? A. No.

Q. The timbers are constantly growing older; decay is setting in in various parts of the building, and the cost of repair is no kind of measure of the deterioration in value, is it? A. It is some kind of measure, but it does not entirely cover the ground.

Q. Not a very adequate one, is it? A. I say that it might vary a great deal according to the class of buildings.

Q. What is a marble ashler face? A. That is a stone facing—marble facing—in front of the brick work, usually about four inches thick.

By Mr. LAMAR:

Q. Did I understand you, that in making your computation of two hundred per house, to mean that these houses are out of
238 repair to the extent of two hundred dollars each? A. Yes, practically so.

Q. In saying practically so, what do you mean. A. Well, the reason I do not say fully so is because there are quite a number of items which might be left undone and still the houses would be serviceable, but to put them in as good condition, as near as possi-

ble as they were originally, it would be necessary to spend all of two hundred dollars.

Q. State whether they are in a tenantable condition now? A. Yes.

239 FRANK M. ANGELO.

Direct examination.

By Mr. LAMAR:

Q. State your name, residence and occupation. A. My name is Frank M. Angelo; I reside in Alexandria, Virginia; am employed as fireman at the Weather Bureau, in this city.

Q. Mr. Angelo, what, if any, connection, did you have with the construction of houses Nos. 215 to 225, Ninth street, N. E., Washington, D. C.? A. I did all the carpentering work; at least I was the contractor for the carpenter work.

Q. Who employed you? A. Mr. Bradshaw.

Q. Where were you employed—where did you make your arrangements? A. F—corner F and Tenth streets, Washington, I think it was.

Q. In whose office? A. John H. Walter's office, I think.

Mr. DARLINGTON: John H. Walter?

WITNESS: I think it is.

Q. State whether you saw the land on which these houses were erected before the ground was broken or the time the ground was broken, and whether or not——

A. (Interposing.) No, I never saw it until I went out there and laid the houses off; the ground was not broken when I went out there. I laid off the houses myself, me and my partner and

240 gave the level lines for the foundation.

Q. State whether or not Mr. Bradshaw was present when this was done? A. He was around there off and on; I do not know that he was present exactly at that time; there was hardly ever a day that he was not there.

Q. State whether or not, during the construction of the houses, you were there and if so how often? A. I was there about all the time, from the time they started till the finish.

Q. State what, if any, supervisory jurisdiction you had over the construction of the buildings. A. I was supposed to be a sort of superintendent to look after all the other work, to see that the material was put in right.

Q. State what, if any, particular material was on the particular land upon which the houses were constructed, when you went out there first? A. Well, there was some old lumber there, taken out of some old houses; that was used for scaffolding; that was about all there was there—right on the immediate lots.

Q. Was there any other material there that was used in the construction of the buildings? A. There were some lots adjoining on

the right-hand side of the house two lots; there was a lot of brick there that were used in these buildings; how many there were, I cannot say exactly.

Q. About how many? A. I should suppose four or five thousand.

Q. Now, during the construction, of these houses, Mr. Angelo, state whether, before the commencement of the construction of these houses or during the construction thereof, state whether James A.
241 Ashley, Nehemiah B. As-ley, Mary A. Breckenridge, Henry F. Beardsley, Mary M. Ashley, Hyden H. Ashley, Ralph B. Ashley, Emma B. Jenkins, Joseph R. Beardsley or any one else claiming adversely to Aaron Bradshaw, made known to you any adverse claim, or in any way objected in your hearing, to the placing of improvements on these lots? A. I never heard a word about anything of the kind until this came up; no person ever said anything to me about stopping work, or that there were any claims against the buildings or ground or anything of the kind.

Q. State when you first heard of it? A. Well, the first I heard of it, to be positive about it, was when Mr. Armstrong came over to my house.

Q. When was he over to your house? A. A short time ago, he was over there and wanted to know if I knew anything about this and I told him I done the carpenter's work and he told me the whole circumstances,—something about the buildings, but I don't know what it was; in fact, I paid no attention to it. He wanted to know—I did not know that I was going to be summoned though.

Q. Where, if at all, did you understand at the time the buildings were being erected, the money came from with which to erect the same? A. I understood that it was to come from a building loan, but I was always under the impression that the money was coming from Richmond—a building and loan association in Richmond.

Q. In the receipt of your payments from time to time, did you ever await the return of Mr. Bradshaw? A. Oh yes; I had to wait once or twice for my money.

Q. Where did he say he would go to for it?

Mr. DARLINGTON: I submit, in addition to the general objection which applies to all this testimony, that it can scarcely be
242 worth while to waste time over hearsay information, derived by the witness from other people.

A. Question not answered.

Q. State whether or not, Mr. Bradshaw told you the name of the person through whom the remittances from the building association were made?

Mr. DARLINGTON: Same objection.

A. I don't think Mr. Bradshaw ever told me who; I just there in the office heard them say, where they were coming after the money, that they would have to see Mr. Acker—"We are going up to Mr. Acker's office."

Q. State whether or not you know the source from which any

brick came with which these buildings were wholly or partially constructed? A. Well, I can only say this that they told me—Mr. Bradshaw told he had bought a kiln of brick.

Mr. DARLINGTON: Same objection.

WITNESS (continuing):—that he wanted to work into these houses. That is all I know. I do not know positively that he bought them from Mr. Childs, but I was under the impression that he did.

Q. Mr. Angelo, do you know what was paid to the various parties for the other branches of the work? A. I know nothing but what was paid to me; I do not know what any one else received.

Q. Are you familiar with the handwriting of John H. Walter? A. No, sir.

Q. Never saw him write? A. Oh yes; I have seen him write.

Q. I see a place here where he signs as president of the board—would you say that was his handwriting? (Shows witness paper.) A. It looks like it, but I would not like to swear to it.

Q. I show you the five papers marked "Exhibit No. 6"—I
243 will ask you whether or not the signature thereto is the signature of Mr. John H. Walter, to the best of your knowledge? A. It looks like it—I believe it is.

Mr. DARLINGTON: I suggest that Mr. Walter is here in Washington, and it ought to be easy to prove whether it is his handwriting.

WITNESS: There is another signature there; I will swear to this paper; this bottom one is mine.

Q. Look at the signatures at the bottom of each of these papers, F. M. Angelo, and state whether or not, they are in your handwriting? A. Yes, sir; they are all in my handwriting; I can bring a party here who can shut her eyes and put her finger on that answear to it—my wife.

Q. Will you look at Exhibit No. 28, indorsed Release of liens, and state whether or not the certificate thereto, signed Frank M. Angelo, under date of April 26, 1894, bears your signature? A. Yes, sir; that is mine.

Q. Who is A. C. Walter, the person who signed it? A. That is a brother of John Walter.

Q. Where was that paper signed? A. I believe that was signed in John Walter's office.

Q. Will you look at the paper marked "Affidavit of contractor," Exhibit *it* No. 7—look at the signature, Frank M. Angelo, and state whose signature that is? A. That is my signature; yes, sir; that is mine.

Q. Where was that executed? A. I don't remember.

Q. See the name Leta M. Morse there to it? A. I did not know
that that was her name; I know who she is—a typewriter in
244 Walter's office—but I never did know her name. I know that ain't her name now; she has married since.

Q. This paper was executed before her? A. Yes sir.

Q. In these various papers, you certify to an expenditure of

twenty-four thousand dollars on these buildings—state how it was that you signed these? A. I was only the contractor to do the carpentering work. In signing these papers, they had to have some one to sign the papers to get the money from the building and loan association, and there was no general contractor—it was not let out—I did the carpenter's work, and some one had to sign as contractor, and I was there and I signed the first, and he got me to sign all the balance. I remember very distinctly that I kicked on it, because I did not know whether these amounts of money were expended.

Q. Who told you to sign? A. Aaron Bradshaw.

Q. Who else did you advise with when you say "they?" A. Well, they were all talking concerning it there.

Q. Did Mr. Walter tell you that it was all right to sign it? A. Yes, I think he said sign it, but I wouldn't be positive about it.

Q. This was all in Walter's office? A. Yes, sir.

Q. You are a friend of Mr. Walter, are you not? A. Oh yes; I have known him for years.

Q. He introduced you to Mr. Bradshaw, did he not? A. Yes, sir.

Q. Then, as a matter of fact, you signed these papers——

245 WITNESS (interposing): To get my money.

Q. To get your money and without knowing whether or not all the amount had been expended on them, save and except what had been paid to you? A. That is all.

Q. And in doing so you were advised to make the certificate at a conference, or conferences in Mr. Walter's office, where Mr. Bradshaw and Mr. Walter were present? A. Yes.

Q. When Mr. Armstrong showed you these affidavits, Mr. Angelo, did you state to him then that you were not the contractor? A. No, sir.

Q. When did you first make known to a representative of the building association that you were not the contractor? A. I made the representation to you right here.

Q. How long ago? A. I don't know; it was last week, wasn't it. Last week I was here. I was not the contractor—only so far as the carpenter's work was concerned.

Cross-examination.

By Mr. DARLINGTON:

Q. You- only connection with the work was as sub-contractor for the carpenter's work? A. No, sir; I was contractor for the carpenter's work.

Q. That was a sub-contract, wasn't it? A. No, sir.

Q. You were not contractor for the entire building, but sub-contractor for the carpenter's work? A. If you consider Mr. Bradshaw the contractor.

246 Q. Who was the contractor for the brick work? A. I do not know. We started in with one party and wound up with another—it is hard to tell. They wound up with a lot of

darkies on there. They were union men in the first place, that was, non-union men done the stone work and the union men quit and they filled up with non-union men.

Q. Who was the first brick contractor? A. I do not know.

Q. Was it James T. Childs? A. I do not think he was.

Q. Do you remember who was. A. No, sir I don't; I think they bought some of the brick from Mr. Childs—I think he had charge of the brick work and finished up under the non-union men.

Q. This lot of old brick that you say you found on the adjoining lot—that was second hand brick, was it not? A. I can't remember; I don't remember whether it was or not, but I don't think it was. I think it was a lot of hard brick; I don't think they were second hand brick.

Q. How clear is your recollection about that—that they were not a lot of brick that had been hacked? A. They were just as though they were turned from the kiln—from the shute-car—they may have been old brick, but they didn't look like it to me; I didn't see any lime on them—don't remember it at least.

Q. Did you know James A. Ashley, Nehemiah B. Ashley, Mary A. Breckenridge, Henry F. Beardsley, Emma B. Jenkins and the other parties named by Mr. Lamar? A. No sir; not one of them.

247 Q. Did they know you so far as you know? A. If so, they didn't make themselves known to me.

Q. You say you thought this building loan came from Richmond? A. Yes, sir.

Q. How did you get that information? A. I don't know sir.

Q. Did you know anything about a deed of trust being on the property to secure a building and loan association? A. No sir.

Q. Did you know anything about any suits pending against the property? A. No sir.

Re-direct examination.

By Mr. LAMAR:

Q. You say Mr. Childs—what Childs do you mean—as having sold him some of the brick? A. I don't know what his name is; he was an old gentleman—old gray haired gentleman; I suppose by this time he has passed in his checks; I do not know; I have not seen him since. I saw him at the houses.

Q. You saw him at the buildings? A. Yes, sir.

By Mr. DARLINGTON:

Q. What was he doing there when you saw him? A. He was going around attending to the bricklayers.

Q. Had charge of the erection of the houses so far as the brick work was concerned? A. It seems that he did; he had

248 charge of those colored hands or something of that kind; I wouldn't like to swear to that though.

249 THOMAS W. SMITH.

Direct examination.

By Mr. LAMAR:

Q. State your name and address and your occupation? A. Thomas W. Smith; 1st and Indiana avenue, N. W.; lumber dealer.

Q. What was your business in the fall and winter of 1893 and spring of 1894? A. Lumber dealer and furnisher of sash doors and blinds.

Q. State whether or not you furnished an- material in connection with the construction of houses Nos. 215 to 225 Ninth street, northeast, the property in controversy? A. Yes, sir; the houses are located on the east side of Ninth street northeast, between B and C streets; near the corner of B street.

Q. State with whom you made your contract in connection with them? A. I made a contract with Aaron Bradshaw.

Q. State how you charged it on your books? A. Aaron Bradshaw and Mary E. Bradshaw—she is his wife.

Q. State why you have Mary E. Bradshaw on your books? A. I had been selling him lumber and mill-work, prior to this time and all charges made on the books were made against Mary E. Bradshaw, because all the property that Mr. Bradshaw owned in the city at that time was in her name.

Q. State whether or not it is your custom, and whether or not you satisfied your mind as to the ownership of the property
250 before furnishing the material?

Mr. DARLINGTON: That question is objected to on the ground that the custom of the witness would not be evidence in this case and on the further ground that the question calls, not for any fact, but for conclusions arrived at by the witness.

A. I knew prior to the making of the contract with Mr. and Mrs. Bradshaw for the material that I furnished them, that they claimed the land upon which these houses were built—I knew prior to any information I had received, as to their building there—several years before that. I was informed by Mr. Bradshaw that he had made a loan for the erection of these houses and that the title had been passed by a title insurance company in this city.

Mr. DARLINGTON: I object to anything stated by the witness as coming from Mr. Bradshaw, as hearsay and incompetent.

WITNESS (continuing): After having satisfied myself of that by the representations made by Mr. Bradshaw and the record of the papers as I found them in the Court Record, I agreed to furnish him the material.

Q. Did you furnish the material? A. I did; I furnished the lumber and the mill-work and the glass and it was paid for.

Q. When were you paid for it? A. I was paid for it early in the

spring, or in the spring of '94.; I don't call to mind the exact date. My recollection is that it was in April of '94.

Q. Where did you understand from Mr. Bradshaw the money came from? A. My recollection is he told me that the money came from Richmond.

Q. Would you be positive about this? A. As positive as one could be that is trying to remember something that happened
251 or he had heard seven or eight years ago, and, as I related to you on Saturday, on answering the same question.

Q. Mr. Smith, are you acquainted with James A. Ashley? A. I have had a passing acquaintance with Mr. Ashley for twenty years or more. The first time I saw him I knew who he was. He lived on C street between Delaware avenue and First street east, on the north side of the street; C street north, between Delaware avenue and First street; I have had a passing acquaintance with him ever since.

Q. Do you know what his business was and is? A. A clerk in one of the departments.

Q. Do you know which department it was? A. No.

Q. In coming up into this part of the city from where he lived, state whether or not he would pass by your office? A. Yes, sir.

Q. State whether or not, Mr. Smith, during the erection of these buildings, or at any time prior to their completion, James A. Ashley, Nehemiah B. Ashley, Mary A. Breckenridge, Henry F. Beardsley, Mary M. Ashley, Hyden H. Ashley, Ralph B. Ashley, Emma B. Jenkins, Joseph R. Beardsley, or anyone else informed you or notified you of any claim on their part to this property as against Mr. Bradshaw? A. No, sir.

Q. In accordance with your custom, state whether or not you would have placed the materials there had you known of any adverse claim?

Mr. DARLINGTON: Objected to as calling for a hypothetical statement.

A. I would not; I never furnish any lumber or material where there is a dispute about the title unless the party wanting the material has credit outside of what the land in question would give him.

Cross-examination.

252 Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Smith, were you acquainted with any other of those several persons whose names Mr. Lamar read to you, except James A. Ashley? A. No, sir.

Q. Did you inform James A. Ashley or any other of these parties, that you were furnishing these materials? A. No, sir.

Q. So far as you know, they knew nothing about it? A. Not so far as I know; no sir.

Q. You stated that you supposed the title was in Bradshaw, from what he told you and from the record of papers as found in the Court Record—what papers do you refer to? A. The deed of trust.

Q. You take the Court Record, do you? A. Yes, sir. That is my recollection, Mr. Darlington.

Q. Your recollection is that you examined the Court Record? A. I look over the Court Record almost every day—there may be a few sheets I don't look over. This transaction between Mr. Bradshaw and myself was in the ordinary course of business; his credit was with me, at that time, based upon the ownership by his wife, of property, and the material being charged to her. He came into my office in the regular course of business, saying that he was going to build some houses and had made a loan with a company out of the city, for the money. I took that for the truth.

Q. Have you now, any distinct recollection of having noticed the deed of trust in the Court Record? A. No sir; just from the usual course of business from day to day—looking over it.

253 Q. How long has it been your custom to look at the Court Record every day? A. Almost ever since it was first issued.

Q. That was some years prior to this transaction? A. Yes, sir.

Q. Did you ever notice any ejectment suits brought against Mr. Bradshaw? A. Yes, sir.

Q. Did you notice them at the time they came out? A. Yes, sir.

Q. That was shortly prior to this lumber transaction? A. I couldn't say; my best recollection is, Mr. Darlington——

Mr. LAMAR (interposing): I object.

WITNESS (continuing): It was after these houses were completed; that is my recollection of it.

Q. You are probably now referring to the newspaper notices of the trial, are you not? A. I may possibly be; I am quite positive about the statement that I knew of no controversy with reference to the title to this property until after these houses were completed.

Q. But you had been taking the Court Record for a number of years before and were in the habit of looking it over daily? A. Yes, sir.

Q. And the Court Record giving all real estate transfers and suits affecting titles of real estate etc.?

Mr. LAMAR: We object to that question, because, as counsel must know, this property itself, became a part of these suits in a way which would not form the subject matter of a reference in this

254 court calendar, as made up, it having relation particularly to original pleadings.

Mr. DARLINGTON: I do not know any such fact in regard to the Court Record; on the contrary, I understand its business to be to give ejectment cases to the building trades and real estate interests, and notice of all suits and proceedings in suits which affect titles.

A. No answer.

Q. You say you knew, several years before these houses were begun, that the Bradshaws claimed the land—how did that come to your attention? A. From Mr. Bradshaw, and from a general knowledge of the ownership of land on Capitol Hill in the neighborhood of this property. I furnished material on the same square, for houses there and to several other people and I had occasion to examine into the ownership of this square.

Q. Did you examine into the ownership of the ground upon which these houses stand? A. Yes, sir; in a cursory way; by information I received from others; principally by information which I received from others—not by a careful examination of the books in the Record office.

Q. Did you ascertain that the Ashleys and others had been paying taxes on it for three-quarters of a century?

Mr. LAMAR: We object to that because this witness has stated that he had not heard of any claim on the part of the Ashleys and further because of the allegation which counsel interpolates into the record, which is not shown by the record, thus far, in these proceedings.

A. No sir.

Q. Mr. Smith, what sort of an examination was it that you made, that didn't disclose to you who had been the persons claim-
255 ing title of record for the preceding seventy-five years? A. It was not necessary for me, at that time, to go into that—the history of that square, with reference to the confusion in the numbers of the lots etc. The National Capital bank has had claims on property in that square and we have had affairs about land there; of course my examination was cursory in its character. I am not pretending to say that I made an examination of the title as a title company would, but more from hearsay, just as I would ask my next-door neighbor in a conversation, who owned a certain lot and he would tell me.

Q. And this confusion in numbers to which you have referred led to much conflict over titles—you knew that? A. Yes, sir.

Re-direct examination.

By Mr. LAMAR:

Q. State if you knew whether or not Mr. Bradshaw was at that time in actual possession of this ground and was there any difficulty on the question of possession? A. According to my recollection there was a post and wire fence around these lots.

Re-cross examination.

By Mr. DARLINGTON:

Q. What was it on the ground that the fence was protecting—do you know Mr. Smith? A. Nothing but the ground itself.

Q. These post and wire fences were a very common method, at

that time, were they not, of inclosing land the title to which was in dispute were they not? A. Yes, sir.

Q. Had it any other purpose, at that time—this method of
256 inclosing parcels of land in such a way? A. It was the method at that time—there was a number of lots in the city, inclosed in that way where the title was not in question.

Q. For what possible object? A. To keep off trespassers.

Q. This fence would not have kept off trespassers, would it? A. The barbed wire fence would.

Q. Wasn't this simply a line of posts with a stran- of wire running along? A. I can't remember about the strands; it was a common method at that time, of taking possession of a lot where the title was presumed to be not as strong as it should be.

Q. State whether or not, Mr. Smith, that method is not used in maintaining possession of land to which parties claim title where there are no buildings on it? A. It is a method used on large tracts of land in the city to inclose it for pasture for horses and cattle.

Q. Did you, from the existence of this fence there question the right of the person who placed the fence there, to the property? A. The question would arise in my mind, if I saw a lot fenced in with post and wire that there might possibly be something wrong with the title, but having been assured in this case that a title company had passed the title of that property as being good in Mary E. Bradshaw and Aaron Bradshaw, I furnished the material for these buildings.

Q. Mr. Smith do you pretend to be an expert on the manner and mode of maintaining possession of property in dispute? A. No, sir; I am a lumber dealer. I have been a merchant in the city of Washington since 1868 and largely interested in real estate and I have had occasion to have a large number of titles examined
257 and have been in the habit of examining property personally at the site, before purchase, and possibly from my experience might be considered slightly expert on the question of conditions of property itself, when seen by a probable purchaser, as to title.

Q. Mr. Smith, do you recall the corner south of this property—corner Ninth and C streets, southwest corner? A. Yes, sir.

Q. Do you recall whether or not there is any street or road between this corner lot and the land in controversy? A. I do not recall seeing anything like a street in between the south, or what is known as the corner lot and the land where these houses are built.

Q. State whether or not you are certain that the fence to which you refer, went around these particular lots? A. It did not. There was a board fence around the corner lot and a little one-story brick building on the corner.

Q. That brick building lot, that you have reference to wasn't any part of the land on which these buildings were constructed? A. No sir; my recollection is that the wire fence included not only the land on which the houses in dispute were but ran north to an alley that was in the rear of the house that Mr. Bradshaw lived in.

Q. Then was Mr. Bradshaw living within the inclosure? A. No sir.

Q. He lived at 901 C street northeast? A. It was the northwest corner of the square on which these houses were built.

258 WALTER H. ACKER was recalled for further examination.

Direct examination.

By Mr. LAMAR:

Q. Mr. Acker, since you were on the stand Mr. Frank M. Angelo has testified to the fact that, instead of being the builder, as purports to have been the case on the various papers marked "Exhibit 6" and in his affidavit marked "Exhibit 7," as a matter of fact he simply was the contractor for the carpentering work on the buildings in controversy, and didn't know the amount paid by Bradshaw to persons doing the other kind of work on the buildings; state whether or not you were cognizant of this fact prior to the turning over of the last payment on these buildings? A. No; I didn't know any such thing as that. My information, of course, is derived from Mr. Bradshaw, as to who was the contractor. I was informed that he was the builder and clothed with the general powers of every builder for executing a contract; and the first voucher, of course, he was called to sign, and was required to sign each voucher as he went along. One of the requirements of Mr. Bradshaw was that there should be an affidavit showing the amount of money the builder was to receive and the affidavit was signed in the ordinary course.

Q. I believe you stated that you are familiar with the handwriting of Mr. Simmons—B. Stanley Simmons—when you were on the stand before? A. I think I did; yes.

Q. You identified several papers as bearing the signature of Mr. Simmons. Will you look at paper marked "Exhibit 16,"
259 and state whether or not that is in the handwriting of Mr. Simmons? A. I should say, yes.

Q. Mr. Simmons, I believe, was the architect in this case. A. I understood so.

Q. Mr. Acker, I hand you a paper marked "Exhibit 17," purporting to be a certified copy of a certificate of title from the Real Estate Title Insurance Company, numbered 18,868. Will you state whether or not you have ever seen that paper before, and how, if at all, it came into your hands? *Q.* My recollection of that is not quite clear, but the best recollection I have is that this paper was among the batch of papers turned over to me by Mr. Brevard at the time he asked that this title be examined.

Q. Do you know where Mr. Brevard is, Mr. Acker? A. I do not. Mr. Brevard left Washington several months before the facts came out in reference to this loan.

Q. Was he at that time connected with this company? A. He remained in connection with this company for several months after

that loan was made, but had severed his connection, I think, a few months before we found out about the defect in the title.

Q. And they have not heard from him since? A. As far as I personally know.

Q. Mr. Acker, did you know Leta M. Morse. A. No, sir; I did not.

Q. Did you have any knowledge that she was a stenographer in Mr. Walter's office or had any connection with this matter before the loan was made? A. No.

260 Q. When did you first hear it? A. At the trial.

Q. From whom? A. I believe Mr. Ridout.

Q. In your cross examination by Mr. Darlington, something was said about Mr. Miller and yourself being present at the trial of the ejectment cases, as well as Mr. Mattingly. State which one of these counsel actually took part in the trial before the court? A. Mr. Mattingly, while he was well, conducted the case. After Mr. Mattingly was taken ill on the first trial Mr. Ridout took charge of the case.

Q. State whether the trial had closed or not—was it in the midst of the trial that Mr. Mattingly was taken sick? A. We had been on about two weeks when he became ill.

Q. You and Mr. Miller didn't actually take part in the trial before the jury? A. We were present each day but didn't actually take part in the case.

Q. State whether or not mesne profits were waived in open court in the trial of this Nehemiah Ashley case? A. I think they were by counsel; I think Mr. Worthington made that statement.

Q. Are you certain that he made that statement? A. I think so, that he made a statement to that general effect.

Q. The trial to which we have been referring as taking up so much time—to which of the cases had it relation? A. There was a suit—there were five heirs to this estate; this one, I believe, was Nehemiah B. Ashley.

Q. Then, after the decision by the Supreme Court of the
261 United States the other cases came up for trial, did they? A. Yes, sir; consolidated.

Q. Do you recall how long it took to try these? A. I do not think it took more than a matter of a couple of days.

Q. Was Mr. Bradshaw present at that time? A. I think not.

Q. Was any testimony put in by him in his defence in these trials? A. I think not. There was not.

Cross-examination.

By Mr. Darlington:

Q. Mr. Acker did you ever see the original certificate corresponding to what "Exhibit No. 17" purports to be a copy of? A. I am not certain of that, Mr. Darlington.

Q. You do not know whether such a certificate really ever existed or not? A. No, I don't sir.

Q. What was Brevard's relation to the New South Building Association? A. Of course I can only state as to what he said his position was, and that was that he was general agent of the New South Building and Loan Association.

Q. It was in that capacity he dealt with you, was it? A. Yes, sir.

Q. You did know who Leta M. Morse was long before the trial? A. I confess I did not; I was very much surprised when the fact was brought out at the trial.

Q. Hadn't you seen these affidavits and other papers signed by Mr. Angelo and sworn to before her? A. I had, but I hadn't connected her with the office of Walter.

262 Q. At the trial you heard Mr. Ridout say she was Walter's typewriter? A. Yes, sir.

Q. And you also heard him testify that although he had been attorney for Walter for a number of years that he had never been able to say or know who Lydia M. Hoagland was—whether she was really a person or not? A. Yes.

Q. You, Mr. Miller, Mr. Mattingly, all, appeared at these trials as attorneys in the case? A. We appeared, yes, sir; we were present.

Q. You were at the trial table conferring with counsel and making such suggestions as seemed proper? A. Yes.

Q. You didn't address the jury? A. No, sir, nor conduct the examinations.

Q. You say the long trial was the Nehemiah B. Ashley trial? A. I think that is so.

Q. Don't you recall this fact, that before entering upon the trial of that suit we had tried the Beardsley case? A. That is true, we had.

Q. And it resulted in the withdrawal of a juror? A. We tried it up to that point, but we hadn't finished that case, though.

Q. We hadn't got beyond the plaintiff's testimony in that case? A. Yes, sir.

Q. At that trial, Mr. Acker, you and the other counsel for the building association, learned from the evidence that the Ashleys and others under whom they claimed had been for three-quarters of

263 a century paying taxes on this ground; that Mr. Bradshaw claiming to act as agent for Walter had taken possession of it and put a fence around it; that the Ashleys had removed this fence; that Bradshaw then went there and put the little brick building on the corner, put it up in two days, having it guarded by a number of negroes, armed with sticks and clubs; that these negroes stayed in the house the intervening night to defend it from the Ashleys spending the hours of the night in singing "We'll Hold the Fort," and that this little house was designated as "The Fort." You remember that testimony as being developed at the first, or Beardsley, trial, do you not?

Mr. LAMAR: Counsel objects to this question on the ground that no foundation for it can be found in the examination in chief of this

witness; that the testimony that was taken on that hearing is the best evidence as to what various witnesses said; that the main part of the property about which the testimony is sought to be produced here is not the land involved herein, but that the original ejectment suit covered lot one and if counsel insists upon an answer to the question and doesn't withdraw it, it is suggested to him that he complete the other branch of his cross examination of this witness and let this question be certified to the court. It is manifestly incompetent.

Mr. DARLINGTON: I insist on the answer and shall not consent to any further extension of time to take the question to the court.

Mr. LAMAR: As this is the last day within which we must take our testimony, counsel is compelled to abstain from submitting this question to the court, but gives notice of his purpose to make a motion at the hearing to exclude the answer. It is thoroughly irrelevant to the issue and for the reasons stated.

A. I should answer that in the affirmative.

264 Q. And that at the same time Bradshaw reerected his fence around all the property in dispute?

Mr. LAMAR: I renew the exception.

NOTE.—It was here understood between counsel that the motion and exception has relation to this whole line of cross-examination.

A. Yes.

Q. And you recall, do you not, that at the Nehemiah B. Ashley trial the same facts were testified to by the witnesses, and that the manner of Bradshaw's getting and maintaining possession was not denied by him or any witness on his behalf? A. I believe that is true.

Q. And notwithstanding these facts the building association continued the services of counsel to assist Bradshaw in holding the property thus gotten into his possession, through all the courts until the decision of the Supreme Court of the United States rendered further resistance impossible? A. That is true.

Q. It is further true, is it not, that before commencing the Nehemiah B. Ashley trial, the plaintiffs in ejectment suits, with a view of lessening the expense and expediting the trial, moved then to consolidate the five suits and that this was resisted by counsel for the building association successfully? A. Yes.

Q. Mr. Acker, here is a matter, not referred to in the examination, to-day but I want to call your attention to it. I understood you to say the other day that the clerk's index No. 2 was not in existence in November, 1893? A. No, I don't think I made that statement at all.

265 Q. I understood you to say that you had examined No. 1, and that No. 2 was not in existence? A. I did not intend to say so; that is not my recollection.

Q. It is your recollection that No. 2 was not in existence then. A. I can't say Mr. Darlington; I am not clear on that.

Re-direct examination:

By Mr. LAMAR: Counsel for the complainant here offers as an exhibit in this cause certified copies of the docket entries in the two general index books to ejectment suits: Motion filed March 6, 1893 in *at* law No. 32039; motion filed April 21, 1897, in law No. 32,039; judgment filed May 10, 1901, in law No. 32,039; copy of docket entries in law No. 32039 copy of original declaration filed October 13, 2 1891, in law No. 31181; motion to amend declaration filed March 6, 1893 in law No. 32181; judgment entered October 14, 1897, in law No. 32181; mandate issued February 26, 1901, law No. 32181; docket entries of the supreme court of the District of Columbia in law No. 32181; motion for leave to amend declaration, filed March 6, 1893, in law No. 32182; motion to consolidate, filed April 21, 1897, in law No. 32182; judgment of May 3, 1901, law 32182; docket entries in law No. 32182; judgment in law No. 39040 of May 3, 1901; docket entries in law No. 39040; docket entries in 39064, and certificate of the clerk of the court as to these and ask that the exhibit be properly marked; also judgment of May 2, 1901, in law No. 39063 and docket entries in same case.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 35."

Mr. DARLINGTON: Will counsel kindly state for what purpose these fragmentary exhibits of proceedings in these several suits are offered?

266 Mr. LAMAR: Without going into details the several exhibits are filed for the purpose of proving the allegations of the bill in this cause.

Mr. DARLINGTON: In respect to what?

Mr. LAMAR: In respect to the various points as they are made in the bill. I think it unnecessary to cumber the record by going through it in detail.

Mr. DARLINGTON: If counsel will state specifically what his object is I may not object; otherwise, I shall have to object on what I consider well settled legal principles to the offering of mere fragmentary extracts from the proceedings.

Mr. LAMAR: The bill of complaint alleges the proceedings in the various ejectment suits; it alleges concealment as to their existence and makes other averments which counsel feel are competent on the face of the proceedings to render proper as evidence each and every of these copies; besides the cross examination of counsel of this very witness on the subject of the entries in the general index to the ejectment records renders pertinent the copy of these records relating to suits brought in respect to land embraced in square 939 and deeming them clearly pertinent to the issues involved herein, I do not deem it incumbent upon counsel to go further into details at this time as to the matter, as much to save time as anything else.

Mr. DARLINGTON: I object to an attempt to prove by a certificate th- alleged fact that a number of ejectment suits appear on the records of the court relating to square 939. I observe that the ex-

hibit now offered contains no extracts from, nor any other reference to, any of the proceedings in the Joseph Beardsley suit, in which case the first trial was had. I also fail to find any reference in it to one suit brought by Breckenridge and H. Frank Beardsley.

267 Mr. LAMAR: Counsel thought that all the suits were contained in this exhibit, and with the consent of opposing counsel will supply any which are not found to be mentioned herein upon more detailed examination of the disposition made of these suits.

Mr. DARLINGTON: I further object on the ground that to be evidence of what took place in the proceedings the transcript should be of the entire record and not of mere fragments. I state this, because I am unable to gather from counsel's explanation what the purpose is in offering these papers. It may be that I would be willing to concede any facts he wishes to prove when I am advised of the purpose for which they are offered.

Q. Mr. Darlington adverted to a second volume constituting the general index to ejectment suits. I hand you Exhibit 35, showing reference to cases at law No. 39040, No. 39063 and No. 39064, and ask you to state whether or not these suits were filed prior or subsequent to the continuation which you made of the title in this case?

Mr. DARLINGTON: I object; these are matters of record, properly proven by the records in the case and are not the subject of parol testimony.

A. These are subsequent.

Q. Mr. Acker, you refer to Mr. Brevard as general agent; did you understand that he was general agent for the whole company or acting in that capacity here in the District? A. That he was the general agent for this locality.

Q. Mr. Acker, in regard to acts on the part of Bradshaw, to which reference was made—I mean the testimony in relation to the
268 controversy between Bradshaw and Ashley and to a little fort; where was that fort—was that little fort found to be on any land involved in this suit? A. That was what is known as the one story brick office on the corner of B. and Ninth, on what is known as ink numbered lot one.

Q. That—did Mr. James A. Ashley testify on that occasion? A. I think not, still I don't want to say that for certain.

Q. Then, all this aggressive controversy about which counsel has spoken in these questions was over the land at the corner in ink numbered one lot, is that right?

Mr. DARLINGTON: I object on the ground that the question is leading and on the ground that it overlooks the testimony already given by the witness that at the same time and in the same connection, the fence was run around all this property, including that on which this house stands.

A. At that time the immediate squabble was over this building which was located on that corner.

Q. State whether or not the testimony did not show great aggression on the part of the Ashleys in opposition to the construction of that particular building in that particular place? A. I think they testified that they objected to that building being up there—being erected.

Q. Do you recall why it was that the fence was torn—was alleged to have been torn down? A. If I am not right, Mr. Darlington can correct me. I think that the Ashleys testified that Bradshaw had a fence around all of this property and that Ashley came and tore it down and that after they tore down Bradshaw's fence he started in to erect a building, if my memory is right. Bradshaw erected
269 a fence around this property and the Ashleys tore it down; then Bradshaw came and erected this one story building and restored the fence all around.

Q. What time did this take place, this controversy. A. I could not tell you the date.

Q. Prior or subsequent to the bringing of the first ejectment suit? A. I think it was prior.

Q. Then prior to 1890? A. If my memory is right, it was.

Q. State whether or not the Ashleys showed twenty years' possession of this property or attempted to. A. Of course that is a matter of opinion; I don't think they attempted to show possession. That was not the material point that the case was decided on afterwards. Ashley had possession and Bradshaw was thrown on the proof of his title and the case fell to the ground because he couldn't show title. There was evidence, however, of Ashleys' adverse possession, running for a long time.

Q. Did it extend to twenty years? A. By some of their witnesses, yes; and by others, no.

Q. Was that question controverted on the other side? A. Of course, the defendants seriously controverted that and Bradshaw claimed that there was no adverse possession. Bradshaw claimed that there was no adverse possession by the Ashleys.

Recross examination.

By Mr. DARLINGTON:

Q. Mr. Acker, Bradshaw didn't claim that the Ashleys had not adverse possession, but simply that they hadn't had it for twenty years. A. Didn't show actual possession for twenty years.

Mr. LAMAR: I wish to note here a general objection.

270 Q. You remember, do you not, that one of your witnesses testified that before he went to the Mexican war he worked for the Baldwins on this square and that they had it protected from the encroachments of cattle by a deep ditch? A. I think you are right.

Q. Now, who was it testified about the Ashleys breaking down Bradshaw's fence? A. I think James A. Ashley.

Q. So that he did testify in the case? A. Yes, sir.

Q. Do you not further recollect that Mr. James A. Ashley was the witness who testified that he had demanded possession of Bradshaw, there being at that time no deeds of record to either him or Walter and that Bradshaw answered that he was acting for Walter and of necessity must refuse the demand for possession?

Mr. LAMAR: We object to this question. The record of the testimony of Ashley himself is the best evidence of what he said; second, because the building association was not a party to this suit, and not in position to defend itself; counsel could not show the existence of improvements by reason of the withdrawal of claim for mesne profits and I shall make a motion at the hearing to exclude this testimony.

Mr. DARLINGTON: The counsel's objection is not only argumentative but erroneous. The testimony as to improvements was not excluded because of any withdrawal of claim for mesne profits. The question for the recovery for mesne profits did not come until the testimony was closed, and then the objection being made that there was no testimony as to mesne profits Mr. Worthington stated then "the defendant can take this to pay counsel fees."

271 Mr. LAMAR: Counsel objects to opposing counsel testifying in the case. The statement made by counsel for plaintiff is based upon evidence in the record to that effect, and if counsel for defendant desires to show the matter he refers to it is suggested that it ought to be done by proof.

Mr. DARLINGTON: If counsel for complainant will point to any testimony to the effect that the existence of improvements was excluded because mesne profits was waived, I shall be obliged to him.

Mr. LAMAR: The testimony of Mr. Acker,—I think you will agree with me that Mr. Acker was asked the question as to whether or not they were permitted to show the existence of improvements and here to-day he stated that mesne profits were not claimed.

Q. Mr. Acker, have you testified that proof of improvements on these lots was excluded because of the withdrawal of the claim for mesne profits? A. No.

Q. You testified that they were not shown? A. I testified that they were not permitted to show that these improvements were erected on these grounds.

Q. This matter of the question of withdrawal of mesne profits didn't come up until the testimony was all closed, did it? A. That is right.

Q. Then Mr. Ridout asked for instructions that no proof having been offered as to the value of the ground mesne profits could not be recovered, and thereupon Mr. Worthington jocularly stated "then you can keep the mesne profits to pay counsel fees." Isn't that about what occurred? A. Yes, sir; that is about right.

Q. What are the suits shown on this last exhibit which you state

were subsequent to your continuation of the title? A. Those
272 mentioned in that first book are lot one, square 939, No. 32,039——

Q. (Interposing.) Just give me the numbers that you think were subsequent? A. Nos. 39,040, 39,063 and 39,064.

Q. You think these suits were brought subsequent to your continuation of title November, 1893? A. They were brought in 1895.

Q. Now, as to No. 39,040—isn't the fact this: That the suit for the Beardsley interest in this property was brought, originally, for Joseph Beardsley, the sole heir at law of Mrs. Beardsley, sister of Joseph R. Ashley—that at the trial of that case, it developed that Mrs. Beardsley left a husband H. Frank Beardsley, who was entitled to an estate by the curtesy, and thereupon, this suit, 39,040, was brought by H. Frank Beardsley, to cure that trouble? A. I presume that is a fact.

Q. So that there was a suit pending for the Beardsley interest, but it was in the name of the heir instead of the husband? A. Yes, sir.

Q. In regard to Nos. 39,063 and 39,064, brought in the names of H. Frank Beardsley and John F. Breckenridge, respectively, isn't it a fact that James A. Ashley had a suit pending at the time your continuation was made, in his own name, but, it appearing that he had given two mortgages one to H. F. Beardsley and one to John F. Breckenridge, these two suits were brought also for his interest by them, in their capacity as mortgagees, the original suit of James A. Ashley still remaining for trial? A. I think that is a fact.

273 By Mr. LAMAR:

Q. Mr. Acker, look at the copy of the digest of volume one, in which each of the suits, 32,039, 32,181, 32,182 and 32,183 appear, and state whether an entry appeared on that docket—at the time you examined the index, whether or not there was any reference to any other part of square 939, than lot one?

Mr. DARLINGTON: I object to the question; there is nothing to show that what counsel is reading from is a copy or extract from index No. 1 of ejectment suits, and it is believed that such is not the fact. I also object on the ground that this so-called index is not a docket or any other book provided for by law.

A. I cannot find anything except the entry referring to lot one.

Q. I believe you stated in your former examination that there was no reference on this index, at the time you made your examination, to anything other than lot one? A. Yes.

274 HENRY E. STRINGER.

Direct examination.

By Mr. LAMAR:

Q. What is your name and occupation? A. I am book-keeper for the Washington Hydraulic Pressed Brick Company, at 1416 F street, N. W.

Q. What is your name? A. Henry E. Stringer.

Q. Mr. Stringer, how long have you been in that position? A. Since a year ago last December.

Q. You have in your custody the day-book and ledger of the years 1893, of that company? A. Yes, sir.

Q. I will ask you to produce those books and turn to page 99 on the ledger—do these books show any material or brick delivered by your company to a job at Ninth and B streets, northeast, Washington, D. C., in 1893, during the month of December and 1894, during the month of January, and if so to whom?

Mr. DARLINGTON: I object to the question until the witness is shown to have some familiarity with the transaction or with the books more than yet appears.

A. Question not answered.

Q. You are familiar with the books of the company are you not? A. Yes, sir.

275 Q. Can you turn to the accounts of John H. Walter and Aaron Bradshaw? A. I can turn to the account of John H. Walter.

Mr. DARLINGTON: It is not sufficient for counsel, by leading questions, to have the witness say "yes" as to his familiarity with the books, and I submit, with my objection, that the witness has not qualified to testify.

Q. Will you produce and identify the delivery book of your concern? Can you do so? A. Yes, sir.

Q. Is this the book? (indicating a book) A. Yes, sir; it was turned over to me when I became book-keeper of that company.

Q. Can you turn to and identify the account of John H. Walter? A. I can.

Q. In respect to property or buildings at Ninth and B streets northeast? A. I can.

Q. In connection with one Aaron Bradshaw? A. Yes, sir.

Mr. DARLINGTON: It is understood that my objection applies to all of the examination of these books and the testimony of this witness.

WITNESS: Page two hundred and fifty.

Mr. LEE: Now, we offer in evidence the account appearing on page two hundred and fifty-five, in the name of John H. Walter, Ninth and B streets, northeast; in connection with it also the account of Aaron Bradshaw, dated December, 1893, and January, 1894, as follows:—

276 Jno. H. Walter, 9 and B. N. E. A/c Aaron Bradshaw.

25,000 #2 press, 12.00
Pay on each load as delivered.

Dec. 15		800 #2		
20		400 "		365 #32
21		1600 "		
26		1600 "		
29		1600 "		
/#6000 press		1200	72.00	
99	365 #32	05	18.25	
			90.25	
1894.				
Jan. 2		1600 #2		
3		1600 "		
9		1600 "		
16		1600		
19		1600		
99 /#8000 press			12.00	96.00

(/# indicates red ink.)

277 Q. Is this the same method of book-keeping that you now pursue? A. Yes, sir.

Q. And these dates represent the dates when the bricks were delivered? A. Yes, sir.

Q. And the numbers indicate the number of bricks delivered? A. Yes, sir; eight thousand delivered, and 2 the shade.

Q. And the 99 refers to the ledger page? A. Yes.

Q. The book you have just produced is a kind of delivery book and shows no payments? A. Yes, sir.

Q. Now turn to the book which shows payments? A. Page 99 of the ledger.

Q. Please produce and read this account in evidence:—

Witness reads from the said ledger, page 99, as follows:—

Jno. H. Walter, 9 & B. N. E. A/c A. Bradshaw.

1893.					
Dec. 31. To brick, 255	90.25	Dec. 20.	By cash	158	9.60
		25.	" "	"	42.25
		28.	" "	"	19.20
		Jan. 4.	" "	2	19.20
	90.25				90.25

Jno. H. Walter, 9 & B N. E.

1894.					
Jan. 31. To brick, 255	96.00	Jan. 9.	By cash,	2	38.40
		" 19.	" "	4	38.40
		30.	" "	6	19.20
	96.00				96.00

278 Q. Do your accounts show any further or other items? A. I looked for same and cannot find them.

Q. I mean in respect to this job against Walter or Bradshaw? A. No, sir; I looked through the books for same but cannot find any entries.

Q. From your knowledge of these books and the method of bookkeeping employed by your firm, can you look on the books and tell us the total amount of bricks delivered and when paid for? A. The total amount of bricks delivered was 14,000 press and 365 fancy, between December 15, 1893, and January 19, 1894.

Q. Can you also state from an examination of these books when and how these bricks were paid for, if paid for? A. They were paid for in the several amounts, as previously given in the record, there, between December 20, 1893, and January 30, 1894, amounting to $186.25.

Q. Can you state the rate at which the press bricks were sold?

Mr. DARLINGTON: It was stated in there.

A. The press bricks were sold at the rate of $12.00 per thousand; the fancy bricks are five cents apiece.

Cross-examination.

By Mr. DARLINGTON:

Q. How do you know that they were sold at that? A. According to the records on the books.

Q. You simply find these figures on the books? A. Yes, sir.

Q. When did you enter the service of this company? A. In February, 1899.

279 Q. What was your occupation in December, 1893 and January, 1894? A. I was in school.

Q. How old were you then? A. Fourteen years.

280 BALLARD N. MORRIS.

Direct examination.

By Mr. LEE:

Q. You are an examiner of patents? A. Yes, sir.

Q. You have been in the Patent Office for how long? A. Since July, 1875.

Q. I was referred to your office yesterday, on the ground that you were an old employé of the Patent Office and was introduced to you by Mr. Dowell—you recall that do you? A. Yes, sir.

Q. And had you summoned today to testify as to matters about which you are to be interrogated? A. Yes, sir.

Q. Is there any book or ledger kept by the Patent Office, of attorneys, prior to 1897, showing who practiced before that office? A. There was no record kept prior to 1897, or thereabout.

Q. Is there one kept now? A. Yes.

Q. Before 1897—I am referring particularly to '93 and '94—did you know Mr. James A. Ashley? A. Yes; I have known him for a good many years.

Q. Was he a practicing attorney before the Patent Office then? A. Yes.

281 Q. How do you state that? A. At the time I knew him when he was an examiner in the Patent Office, and when he resigned I received copies of his announcement of going into the practice of patent law, and after that I saw him frequently in the Patent Office, presumably engaged in the matter of looking after the interests of clients, and he had some applications which he presented in my division.

Q. Were these complicated cases? A. Yes; they were cases of considerable detail.

Q. Then of your own knowledge, Mr. Ashley was a practicing attorney before the Patent Office in 1893 and 1894? A. Yes, sir.

Cross-examination.

By Mr. DARLINGTON:

Q. That was his exclusive business so far as you know? A. So far as I know.

Q. Simply an attorney in patent matters? A. Yes, sir.

Q. Do you know whether he was a member of the bar? A. I do not know.

Q. It was not required then, that a man should be a member of the bar in order to be a patent attorney? A. No.

Q. In fact, the best patent attorneys were those who had been in the employ of the office? A. I would not wish to say that; I might be in the business myself some day; I do not care to advertise myself too soon.

Mr. LEE: I offer in evidence certificate of employment of James A. Ashley.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 36."

282 FRED A. EBERLE.

Direct examination.

By Mr. LAMAR:

Q. State your name and residence? A. Fred A. Eberle; 611 8th street, northeast, Washington, D. C.

Q. State whether or not, in 1893 and 1894, you were in the employ of the firm of the Childs Brick Company, and if so, state who composed that firm? A. Isaac Childs, Charles Childs; I think Jake was dead—Annie Childs widow of Jake, who took his interest—I was in their employ.

Q. In what capacity were you there at that time. A. I can hardly

tell you—I was in everything. I didn't have to look out for them as much then as now, but if a man was sick I would take his place and so on. I was shifted around from place to place.

Q. State whether or not you were acquainted with one James T. Childs? A. Yes, sir.

Q. Was he an employé of this firm in any capacity about this time? A. Not at that time—just previous to that he was—it was the old Childs and Sons.

Q. In what capacity was he employed? A. What they called bank boss—what we call bank boss.

Q. About what salary does that place pay? A. I think about two dollars a day; I won't be positive because I don't recall.

Q. Did you know Mr. James T. Childs during that period? A. Oh, yes.

283 Q. Was he at that time, or ever, a man who kept brick for sale in any quantity. A. I never knew him to.

Q. Was he a man of any means? A. Not that I knew of; he simply worked for a salary. He got—I don't recollect what it was now. I could tell by reference to the books.

Q. Are you the custodian of the books which at that time belonged to the firm? A. Now, you mean?

Q. Yes. A. Yes, sir.

Q. State whether or not James T. Childs stands on those books indebted to the firm. A. He does.

Q. In what amount? A. The full amount of brick that he got; I can't give the amount; I don't recollect it.

Cross examination.

By Mr. DARLINGTON:

Q. Mr. James T. Childs was a brother of Isaac Childs, wasn't he? A. Yes, sir.

Q. Do you or not know that he left some real estate here at the time of his death? A. Not that I know of he didn't.

Q. Do you know? A. I don't think he did; he died in the poor house. I understand he had nothing.

Q. How did you understand he died in the poor house? A. I was told so by his relatives.

284 Mr. DARLINGTON: I move to strike that out as irrelevant and incompetent.

Q. What did he have to do with the erection of these houses? A. I understood he was sort of a foreman; I don't know; we sent brick down there.

Q. You don't sell brick to foremen, do you? A. They were bought through the old man and they were sent there to 9th and C streets.

Q. You don't sell brick to foremen, do you? A. Sometimes, if he was all right.

Q. Well, do you know an instance where they sold brick to foremen? A. I don't know that he was a foreman.

Q. Now, let me ask you if you know of any instance where you sold brick to any foreman on a job and charged them to him? A. That is, outside of the contract.

Q. Mr. Eberle, I think you can answer that question. A. Oh yes; we sell some to anyone and charge them to him if they are all right.

Q. Please give us one instance in which you sold brick to a foreman and charged them to him. A. I could not recall that unless I looked over my books.

Q. Just stop now and think if you recall any instance where brick were sold to and charged to a foreman? A. I do not know that I can recall one just now.

Q. Before you sign your deposition, will you look over your books and see how many, and in what instances you sold to foremen? A. Yes. We would sell to any man if he was all right.

285 Q. Wasn't Mr. James T. Childs the contractor for the brick work on these houses? A. That I could not say.

Q. Then you don't know what he was? A. Only I heard he was there as foreman of the job.

Q. From whom did you hear that? A. From Charley I think, or the old man or some of his relatives on the yard there.

Q. Do you really tell us that Mr. Isaac Childs told you that he let his brother die in the poor-house? A. I think Isaac was dead at the time he died; I am pretty certain Isaac died first; Al. died and then Isaac, and I think James died next.

Q. Which one of the Childs told you that James T. died in the poor-house? A. It might have been Charles' cousin Howard—I am not certain.

Mr. DARLINGTON: I renew my motion to strike out all this hearsay testimony especially in view of the witness' inability to trace it to any one.

Q. How clear is your recollection that Isaac died before James? A. I am pretty certain that he did; Al. died first, and then Isaac, and then James.

Q. Are you positive of that? A. I am very certain of it.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Eberle, do you know anything, personally, with regard to these entries on these books, or do you simply speak from what you saw on the books? A. I speak from the books; Mr. Scott was bookkeeper then, L. D. Scott.

286 Q. And you simply saw some entries there against Mr. James T. Childs and you saw no credits there and no payments as against those entries?

Mr. DARLINGTON: I object to any testimony as to the contents of the books.

A. Yes, sir.

287 CARY H. FIELDING.

Direct examination.

By Mr. LEE:

Q. State your name and residence? A. Cary H. Fielding; 512 10th street, N. W., Washington, D. C.

Q. You are the owner, I believe of a paper published in the District of Columbia, called the Real Estate and Court Record? A. I am one of the owners.

Q. How long has this paper been published in the District of Columbia? A. This paper—the former owner, the man who had it before I got hold of it, the paper which this succeeded, had been running here for a number of years.

Q. This paper was published, was it not, in October, 1893? A. Yes, sir.

Q. Can you produce from your records, the issue published on the 31st of October, 1893? A. Yes, sir.

Q. Is this it? (Referring to file of papers.) A. Yes, sir.

Q. You received it from the former publisher of the paper? A. Yes, sir.

Q. I hand you what purports to be—please identify the paper published, Washington D. C., Tuesday October 31st, 1893, being volume 4, No. 179 and containing in the first column on the
288 left side, under heading "Deeds of trust," being the fourth item, the following: "Square 936, Bradshaw Aaron *et ux.* to J. H. Kennard and Johnston Armstrong, trs. to secure the New South Bldg. & Loan Ass'n. Bond $40,000.00, sub lots 48 to 53 inclusive." I hand you a paper which purports to be a copy of the same paper. First however, do you identify this paper as the issue of your paper of the date named. A. Yes.

A. I hand you a paper which purports to be a copy of the same paper which you have identified from your records—can you identify it as such? A. Yes, sir.

Q. Where did that copy come from? A. From my office.

Q. You found it among your records the other day, at my request, did you not? A. Yes, sir.

Q. It contains the same advertisement which has been read? A. Yes, sir.

Mr. LEE: I offer in evidence this copy of the issue of the Real Estate and Court Record, volume 4, No. 179, of October 31st, 1893.

NOTE.—And the same is filed by the examiner marked Exhibit "W. W. M. No. 37."

Cross-examination.

By Mr. DARLINGTON:

Q. What does the number 26 mean? (Indicating figures to the right of and below the advertisement above referred to.) A. The number of papers recorded that day, from the lowest to the highest. They run from one up—I mean in the recorder of deeds' office.

Q. This exhibit, produced from your office, as also your
289 bound copy, seems to be simply half a sheet? A. The full sheet can be produced. I will probably have to go out of my office to get it, but I can. I don't know whether I have a full sheet or not. The other side contains nothing of interest to the business public, consequently we tear the paper in two when binding it.

Q. What does the other side contain? A. Advertisements and a few legal notices.

Q. Among what class of people did his paper circulate in October, 1893? A. General business public; real estate men, lawyers, wholesale houses and business men generally. Of course we go into very few private families.

Q. I do not see any subscription price on this sheet—what was the subscription price? A. I do not believe I can tell as of that time; the subscription price was on the other side. It is ten dollars per year payable in advance or twelve dollars per year payable one dollar per month.

Q. What was your subscription list in October, 1893? A. Between six hundred to one thousand daily.

Q. That is a pretty wide margin, isn't it? A. Some days it would run very heavy and some days less.

Q. You mean your subscribers varied from six hundred to a thousand daily? A. No; we would sell papers to purchasers.

Q. What was your subscription list? A. It would probably be seven hundred.

Q. Have you got it? A. I didn't own the paper at that time.

Q. Have you, or have you not, any information as to the number of subscribers on that date? A. The information I got when I bought the paper.

290 Q. When did you buy it? A. In ninety-four or ninety-five.

Q. Which? A. I couldn't say without looking over my books; I don't remember exactly; I was connected with the paper before, but didn't own it.

Q. Your paper seems to be confined to noting conveyances, lawsuits and court proceedings, auction sales and the stock markets? A. Yes, sir.

Q. I note nothing here about patents. A. No, sir.

Q. Don't you put in patents? A. No, sir.

Q. Before you sign your deposition, will you produce the books and show what really was the subscription on that day? A. I do not know that I can just do it.

Q. Well, if you can't of course we will not require it, but if you can, I would like to see that book. A. Well, the books were very old and pretty well filled up, and we of course, started out with new books.

Q. If you can find such a book, please let me see it before you sign and if you cannot, of course we shall not expect it.

291 Thereupon the following proceedings were had:

NOTE.—It is stipulated between counsel on both sides, that Joseph R. Beardsley is twenty-seven years old, having been born March 27, 1875.

Mr. LAMAR: Referring to the statement of the witness, Johnston Armstrong receiver, to the effect that certain original papers, referred to in his testimony, including the checks given by the association drawn payable to the order of Aaron Bradshaw, were turned over to his counsel Blair Lee and George H. Lamar, prior to the institution of this suit; and that they have never come back into the possession of the association; it is stipulated and agreed that the following statement of facts may be accepted as true without counsel for complainant being sworn.

Both Messrs. Lee and Lamar remember having seen these particular checks; they remember having received a number of packages of papers which were originally kept in the vault, first of the one and then of the other counsel, whose offices communicated; that there is a number of papers, not in the vault; that four packages were in the vault; that but three of the packages of this distinctive character can be found now, since each of said counsel has moved from one side to the other of the same building, counsel recall that during the removal, certain papers were left out of the vault for a short time and now, after looking in all places where these papers would likely be kept among the records of each of the counsel, they are unable to find this fourth package of papers, but should they be able to do so, they will produce these checks. Counsel also state as a fact, that, in addition to the indorsement of Aaron Bradshaw on the back of the checks, some, and possibly three of them, bore what purported to be the indorsement of John H. Walter. The receiver of the building association states that he did not know, of the
292 existence of such indorsement until just prior to the institution of the suit and that in going through the cancelled checks from the bank, it was not the custom of the association to look at indorsements on checks, except where some p-int was made, which brought the same especially to their attention.

The receiver would have been called upon to testify to this fact while on the stand, but it was hoped that the checks might be found to furnish a basis for the examination, and the receiver has since left the city.

Mr. DARLINGTON: In agreeing to the foregoing stipulation, of course we are not to be understood as agreeing to the accuracy of the statement made by the receiver. I have no doubt that he made the statement made by counsel, however. I will agree, if counsel so states. that Mr. Armstrong would have so testified, but I shall insist that it was the duty of the association to see whether its drafts were endorsed or not and that it must be assumed that it did do so or else the returned checks could have been no sort of evidence to them that the payees received the money.

Mr. LAMAR: Agreeable to the suggestion of counsel, it is stated

that Receiver Armstrong would have testified that his association did not inspect the endorsement on these particular checks and were not cognizant of the fact that Walter's endorsement was thereon until just prior to the institution of this suit.

Mr. DARLINGTON: Are counsel in a position to state that the inspection given to returned drafts is a matter which fell within the province or supervision of the assistant attorney of the association.

Mr. LAMAR: Counsel is prepared to state that Johnston Armstrong was questioned particularly as to whether or not, he knew of his own knowledge as to the custom of the association in the matter of examining checks and he stated that in pursuance of that
293 custom, unless there was something which brought the endorsement specially to the *to the* front that the endorsement on the back of the checks, in checking their books, would not have been noticed.

HENRY F. GETZ.

Direct examination.

By Mr. LAMAR:

Q. What is your name and what is your business? A. Henry F. Getz; I am a contractor and builder.

Q. How long have you been in that business? A. Fifteen years for myself, and then I have been about, I shall say, ten years with my father. I have had about twenty-four or twenty-five years' experience.

Q. Are you familiar with the cost of the construction of buildings in this District? A. I am, sir.

Q. State whether or not you have seen the houses known as Nos. 215 to 225, 9th street, N. E. A. I have, sir.

Q. State whether or not you have made any estimate as to what it would cost to construct such houses as these are at this time? A. Well, without having any plans or specifications, but by taking the size and the work, if they are as I think they are, it would cost about thirty-five hundred dollars.

Q. State whether you are familiar with the cost of material
294 and labor in the winter of 1893 and the spring of 1894? A. Well, I can only answer it in this way, that it was ten per cent. less as far as material is concerned and about fifteen per cent. less as fas a- labor is concerned, compared with the present time.

Q. Then material and labor have gone up? A. Absolutely.

Q. Have you made such an examination of these houses as will enable you to testify as to their present value, taking into consideration the time they have been there, since November, 1893 and April, 1894? A. Well, only in a casual way. I was asked by Mr. Appleton P. Clark to go and look at these houses and place a valuation thereon and report to you, but I was not asked for any special reasons; if I had I would have made a more careful investigation of them. I live in that neighborhood and have seen these

houses from day to day and know about what class of houses they are.

Q. What would you deduct, if anything, from the price you have mentioned as the value of these houses if new, to represent the value of the houses as they now stand? A. I should say about two hundred and fifty dollars a house.

Cross-examination.

By Mr. DARLINGTON:

Q. What does that two hundred and fifty dollars a house represent? A. Deterioration, and the wear and tear, and the elements. The houses have not been properly kept up in my estimation.

Q. You think this two hundred and fifty dollars each would be necessary to put them in the condition they would be if properly kept up? A. Yes, sir.

295 Q. Now, in addition to that is there not always some deterioration in value—the value of structures as time goes by and materials get older and out of style and out of shape? A. Not so much so in style as in wear and tear.

Q. In regard to style, don't you find that plumbing, etc., go out of date and new kinds are required? A. It would not make so much difference, so far as these late years are concerned. Of course, the finishing up of a house has everything to do with regard to the cost and appearance and style.

Q. I suppose you are a builder and not a dealer in real estate? A. I am a builder and not a real estate dealer.

Q. I suppose that an approximation of the cost of a row of houses, without the plans and specifications, is an approximation only? A. That is a fact, and I speak only from experience——

Q. If you had plans and specifications your estimates might vary either way? A. Yes.

Redirect examination.

By Mr. LAMAR:

Q. With your estimate of two hundred and fifty dollars did you take into consideration the deterioration as well as the condition of the state of repair? A. Yes.

296 WASHINGTON, D. C., *May* 12, 1902.

Met pursuant to agreement.

Appearances: The same as at last session.

CHARLES CHILDS.

Direct examination.

By Mr. LAMAR:

Q. Mr. Childs, in the fall of 1893 and the spring of 1894, state what business you were engaged in and what if any firm or corpo-

ration you were connected with during that fall and spring? A. I was connected with Childs and Sons, brick manufacturers.

Q. Of whom did that firm consist? A. Father and myself. My brother having died, we still kept the name of Childs and Sons.

Q. State whether or not, just previous to that time, there was any change in the location of your place of business and if so what? A. Yes; just previous to that we had our yard at the corner of Thirteenth and D streets northeast, and we were moving to our new yard, out back of Mt. Olivet cemetery--12th street, northeast, extended.

Q. State whether or not you knew Mr. James T. Childs? A. James T. Childs was my father's brother—my uncle.

Q. State whether or not he was employed by the firm in
297 any capacity, previous to November, 1893. A. He had been employed by the firm for years, as a watchman and just previous to this as a foreman; he had acted as foreman of what we call a bank gang—a gang of men carrying clay from the bank to the machine.

Q. What salary did you pay him? A. Two dollars a day, I think.

Q. Up to October 1893 or at any time thereafter, was Mr. Childs—Mr. James T. Childs—a man of any means? A. No.

Q. Was he in a position financially to conduct a brick business for himself? A. No, sir.

Q. State whether or not, about that time, there was any quantity of brick sold to him by your firm, and if so, in what form these brick were—on October 27, 1893? A. Well, about that time we sold him one of the old kilns and the lot of brick in the kiln walls which he tore down and hauled himself; then we hauled him a few brick from the new yard—a few hard brick.

Q. Can you state the time at which these kilns were torn down? A. It was in the year 1893. We began to move in '92 and were moving through the fall of '92 and the spring of '93 and having moved away, sold these old kilns to any one who wanted them and would tear them down themselves and haul them away and clean the place out.

Q. State whether or not you know who furnished the money with which the bricks taken down and hauled away by Mr. James T. Childs, were purchased? A. Well, I don't know who furnished the money.

Q. State whether or not the tearing down of that kiln and
298 the hauling away of the brick required an outlay of money? A. Certainly it required an outlay.

Q. State what brick of that character, after being cleaned and the better brick taken and hauled to the place of the party purchasing, ready for use, would have been worth at that time, according to your estimate?

WITNESS: Delivered at the building?

Mr. LAMAR: Yes.

A. Somewhere between five and six dollars a thousand—they could be used as what we call salmon brick—for filling in brick.

Q. New brick at that time were worth about what? A. From five and a half to six and a half a thousand—five dollars and a half a thousand for salmon, six and a half for arch and seven for red—that was about the average price at that time.

Q. State whether or not you know the price at which your firm sold this whole lot of brick as it stood in the kiln, to your uncle, Mr. James T. Childs? A. The old kiln, just as it stood, the walls—that is what it was—sold for one hundred dollars.

Q. State whether or not the principal cost would have been in connection with cleaning the brick? A. Tearing down and cleaning; yes, sir.

Q. Mr. Childs, was Mr. James T. Childs in a position, financially, at that time, to have advanced the necessary funds with which to have torn down and cleaned and hauled away such a quantity of brick? A. He was not.

Q. State whether or not you know the exact time at which these kilns were torn down? A. I do not know the exact time; I know they were torn down somewhere in the latter part of the summer or early fall in 1893. I am ——

299 Q. Could you be certain about this, Mr. Childs; could it not have been later in the fall? A. No, because we had received notice from the parties who bought the ground to get everything cleaned off.

Q. Mr. Childs, state whether or not in your capacity as a member of the firm, you opened the mail, and did that part of the business? A. I atten-ed to all that part of the business myself.

Q. Is there any way in which you can refresh your memory as to the exact time at which these kilns were torn down? A. Yes, by looking at the books at the yard, I could tell.

Q. Will you do that before your testimony is signed and state the dates? A. Well, I could not tell about these kilns; I could tell about the new brick furnished him.

Q. You can't tell about the old kilns? A. No, we made no record of the old kilns. It was merely a lot of old junk that was sold like anything else and no record made of it.

Q. Why were the kilns removed? A. We got notice from the owners of the ground that we had to get the stuff cleaned away.

Q. Who were the owners? A. Lewis and Coblenz, of Baltimore, and Samuel Bensinger was interested with them, I think—it was — syndicate.

Q. State whether or not you know where the brick in this kiln were delivered by James T. Childs? A. They were to go on Ninth street, N. E.; of course, I didn't see them go there, because we didn't haul them—but that was the only job he had at that time.

300 Q. Mr. Childs, did you know W. H. Dougherty? A. Oh, yes; very well.

Q. What has become of him? A. He is dead.

Q. Mr. Childs, after that brick had been in such use as that to which you refer—state whether or not, when it was used as salmon brick, it would be as good as new brick for work of that character?

A. We always build kilns walls with arch brick when we first build them; they had been standing there a good many years and, of course, we couldn't send them out as good brick, but they could be used as salmon brick—of course, in furnishing brick, we could not sell them, but for filling and taking the place of salmon and soft brick for filling in and back they were just as good.

Cross-examination.

By Mr. DARLINGTON:

Q. I suppose, Mr. Childs, you have no knowledge of just what use was made of these brick in these houses? A. No, sir; no positive knowledge.

Q. How long was it used as the walls of the kilns before you turned it over to Mr. James T. Childs? A. Eighteen or twenty years; it was built there when we first used the yard; oh, at least twenty years.

Q. If I understand you, they were practically of small value except as junk? A. Just as if some one would come and buy the kiln, we couldn't send them out, of course. If any one wanted them they could come and buy them. We couldn't send them out as good brick, because they were smoked and blackened and had been used in that way.

301 Q. If I understand you, with the exception of a few good brick sent from your new yard, these brick from the old kiln were all the brick that you knew of that were furnished for these houses? A. Yes—well, no, I can't say that; there was some pressed brick that we didn't furnish.

Q. But, with the exception of the press brick these were all? A. Yes, sir.

Q. I will get you to state about how many new brick were furnished from your yard for these houses? A. Eighty-some dollars worth.

Q. You spoke of this being the only job which James T. Childs had at that time—you mean the Bradshaw houses on Ninth street N. E.? A. Yes, that is the only job I ever knew him to have.

Q. He did have the brick work of that job? A. Yes; he had that and right after that he was paralyzed.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Childs, do you know anything of his arrangements in connection with the construction of the building? A. I know nothing of his arrangements; I know I never got the money for the new brick, and I don't know whether father got the hundred dollars for the old kiln.

Q. His work had been, I believe you stated, had been merely as watchman and overseer? A. Yes, he had worked in the yard.

Q. In the construction of these buildings he was the overseer on

the brick work, as far as you saw? A. Yes, sir; I understood he had the contract; father sold him the brick direct—to James T. Childs.

302 Q. Do you know whether or not there was any difficulty in the construction of these houses with respect to the labor or anything of that kind? A. I believe there was something of that kind; I didn't know—the houses were delayed a little; I don't remember what it was now.

Q. Do you know of any change made in the original plans as the houses progressed? A. No, I don't know about that.

Q. How many brick would there have been in this one kiln? A. Oh, I don't know; anywhere from one hundred thousand to one hundred and fifty thousand. We built these walls very thick; they have to be very thick to stand the intense heat. The brick in the interior of these kilns would not be worth anything at all; the life was all burned out of that entirely by the intense hear. It is only in the walls and foundations that it was worth anything—the foundation arches. There are eight arches and the tops of these would be no good on account of the intense heat.

Q. After James T. Childs got the brick, how many did you estimate there were—one hundred to one hundred and fifty thousand you say? A. Oh, it would take more than that to build the kiln; it would take two hundred to two hundred and fifty thousand to build the kiln—I am speaking of taking the bad brick away; I think there would be that many left, one hundred to one hundred and fifty thousand.

Q. Mr. Childs, state whether or not during the construction of these buildings your firm ever received notice of any adverse claim to Mr. Bradshaw to the possession of this ground from James A. Ashley, Nehemiah B. Ashley, Mary A. Breckenridge, Henry F. Beardsley, Mary M. Ashley, Hyden H. Ashley, Ralph B.

303 Ashley, Emma B. Jenkins, Joseph R. Beardsley, or any one acting for them? A. We never received anything whatever.

Q. Did you at that time receive and open the mail of the firm? A. At all times.

Q. You never heard of any adverse interest or possession? A. None, whatever.

Recross-examination.

By Mr. DARLINGTON:

Q. Do you know any of these parties Mr. Lamar has named? A. No: I know Bradshaw—but he didn't mention him, I believe.

Q. As I understand your testimony, your firm didn't furnish anything but eighty dollars' worth of brick for these building-? A. That is all.

Q. You didn't furnish the brick for these building-, except this eighty dollars' worth? A. That is all.

Q. Did you make any advertisement of the fact that you were furnishing this eighty dollars' worth of brick to these buildings? A. No—our wagons were going there with our tickets.

Q. But the tickets were in the pockets of the negro drivers, were they not? A. Yes; the tickets were in duplicate; one would be returned to the office and one delivered there at the job.

304 Mr. LAMAR: I offer in evidence Exhibits "A" and "B" to the original bill, consisting of the orders passed—the order of the court in equity 22213, on the 18th day of April, 1901, appointing Johnson Armstrong ancillary receiver; and the order of the court passed in the same cause on May 3, 1901, authorizing said receiver to bring this suit.

NOTE.—The said papers already a part of the record as exhibits to the original bill are filed in evidence by the examiner.

Mr. LAMAR: Mr. Johnston Armstrong leaves with me for submission to counsel in response to request of defendant's counsel, made when Mr. Armstrong was on the stand, the case of Broussard vs. West, 47th La. An. 1033.

Mr. LAMAR: I offer in evidence a certified copy of the docket entries in equity cause No. 12318 in this court; also certified copy of the original bill in said cause.

Mr. DARLINGTON: These go in, of course, under and subject to the objection heretofore made to all the papers filed in evidence in this case.

NOTE:—And the same are filed by the examiner, marked "Exhibit W. W. M. No. 38" and "W. W. M. No. 39," respectively.

305 EXHIBIT W. W. M. No. 1.

Filed April 29, 1902.

A complete abstract of title must be furnished as soon as this application has been approved.

MEMORANDUM.—The information required in this application is exclusively for the use of the New-South Building and Loan Association, and is absolutely essential in order that the association may invest its funds with security and so preserve and advance the interest of all its members.

No application considered if applicant be delinquent on his shares.

Every question must be fully answered—

Application for a Loan from the New South Building and Loan Association of New Orleans, Louisiana.

Certificate No. —. Series No. —. Date, ——. Shares owned, —

I, Aaron Bradshaw, the undersigned, hereby apply to the New-South Building and Loan Association of New Orleans, La., for a loan of $24,000, on 240 shares in said association, on the terms and conditions and under the rules and regulations of said association, and in accordance therewith I hereby agree to make, execute and deliver my bond or note to be secured by mortgage or deed of trust on

my real estate hereinafter described as set forth in the statements, questions and answers, following, to-wit:

For the purpose of securing said loan, I declare the following statement to be true concerning myself and the property:

1. My name is Aaron Bradshaw. (Give full name)
2. My age is 41.
3. My address is No. 901 C St. N. E. Street. Town Washington, [county]* D. C. [State]*——

306 4. My occupation is contractor.

5. Are you married? Yes.

6. What is the full name of your husband or wife? Mary E. Bradshaw.

7. Describe accurately and fully the property offered as security; sub-lots 48–49–50–51, 52 and 53 in square. (Give description as it appears in record title, lot, block, section, etc., as unless this be done, the application will be much delayed.) 939, 1 lot 16 by 105—1 lot 16 by 95—1 lot 16 by 105—1 lot 16 by 105—1 lot 16 by 115—1 lot 16 by 105—all fronting on 9th St. N. E. and running back as stated to 10 foot alley in the city of Washington D. C.

* * * * * * *

9. For what purpose is the money borrowed? Improvements.

10. To what will this money be applied if this loan is made you? To build six houses to cost $24,000.

11. By what title do you hold the property? (purchase, inheritance, etc.) Purchase.

12. When did you buy this property? As part owner January 1892, title now in me.

13. How much did you pay for it? 9,930. Cash?

14. Is any part of this mortgage due or outstanding now?

15. Have you ever had any *bona fide* offers for the property, and if so, when were they made, and how much was offered you? About June 1892—$12,000.

16. When is the loan wanted? As soon as papers are completed under association's rules.

(If all at once, state that fact, if in instalments, give amount of each instalment and date when it is desired.)

* * * * * * *

307 26. Kind of buildings to be built? brick—stone trim-ings basement — size on 2 rooms, ground 16½ x 53 each — stories high 3—rooms on 1st floor — 3 on 2—3 floor — bath room Yes. City water Yes Sewer Yes.

27. Have you a contract with a builder for these buildings? If so, annex such contract or a copy of it to this application Applicant is—the builder.

28. Value of buildings in cash to be built, $24,000.

29. Annual rental in cash of buildings to be built, $520.00 each.

[* Words and figures enclosed in brackets erased in copy.]

30. Will the builder, contractor, mechanics, etc., sign an agreement to give a preference to this association's claim against you and over and above the amount of their claims or the claims of any one of them? Yes bond if desired.

31. What is the nature of business and character of buildings in the immediate vicinity? (Describe the surrounding property fully.) Surrounded by residence property.

32. What is its distance from R. R. depot, or if city property how far from business centre? ¾ mile from Capitol.

33. If not rented, what would the property rent for as it now stands?

34. What is the present rental under the existing lease?

35. What amount of fire insurance will you assign to the association? As interest ass'n appears.

36. Are there any mortgages, judgments, mechanic's liens or claims for labor or materials, or other liens or encumbrances on the property at this date? Mortgage, only $7,800.

37. Are there any judgments against you? No.

38. At what sum is this property assessed and when was it last ass-ed officially? 1892, $3600.

39. If there are encumbrances of any kind against this property, will release of all the same be procured by you ready for delivery and for record at the time of closing this loan? Yes.

40. Are there any unpaid taxes against the property, if so, for what years, and in what amounts? No.

41. For what purpose are the buildings now used and by whom occupied.

42. Are there any unrecorded contracts, deeds or mortgages in existence affecting these premises? No.

43. If encumbered by mortgages, by whom held; amount and when due; and if not due, can existing mortgage be paid now? Mortgage held by nat. bank, due Jan'y 1895; can be paid any time.

368 44. What is the population of the city or town where the property is situated? 250,000.

45. What is the rate of taxation in the city or town where the property is situated, and how is this rate divided, as State, city, etc.? 1½ per cent.

46. Here state any other facts affecting the value of the property and desirability of this loan?

In good section for renting.

It is thoroughly understood and agreed by me in making this application:

First. That this loan, if made, will be made by the New-South Building and Loan Association of New Orleans, La., and accepted by me on the terms and conditions and subject to all the regulations contained in the charter and by-laws of said association, and subject to all the rules of the association, and on the terms and conditions to be further stipulated by said association.—and I agree to comply with the same and to accept the loan at the date the same is allowed by the board of directors of said association.

Second. That I agree to pay all the expenses for the abstract of title, which shall be furnished by me, to be made by an attorney designated by said association, and to pay all the notarial charges and other charges, necessary to effect the loan, and record the instrument securing the same, such work to be done by such persons as may be designated by said association.

Third. That in the event there is no insurance, the New South Building and Loan Association is hereby authorized and instructed to have the above described property insured for their benefit, as their interest may appear, for the full term of three years,
309 and deduct the cost of same from this loan; and in the event said property has been insured for a period of less than three years, then said association is authorized to insure said property for the remainder of said term and deduct from the amount loaned the premium chargeable therefor, and the association is to keep the policy and have a certificate of insurance forwarded to me, from the insurance company.

Fourth. That if at any time, while this application is before said association I am, or become delinquent on my shares of stock that consideration of this application shall cease, until I shall have paid up all such indebtedness and be no longer delinquent.

That the loan hereby applied for shall bear 6 per centum per annum interest, and to procure said loan, I also bid, as a premium, 6 per centum per annum on the amount so loaned to me.

AARON BRADSHAW, *Applicant.*

Before me, the undersigned authority, personally came and appeared Aaron Bradshaw to me well known, who declared and made oath to me Leta M. Morse and in the presence of the two witnesses, who hereunto sign their names, that he is the same person who made and subscribed the within and foregoing application for a loan; that he made the statements therein for the purpose of obtaining a loan of money on the land and property therein described; that he fully understands that the loan, if allowed, will be made with the reliance on the truth of the statements therein given, and he further makes oath that each and every of the statement-
310 made in the foregoing application is true.

AARON BRADSHAW, *Applicant.*

Sworn and subscribed to before me, this 25th day of July 1893.

LETA M. MORSE,
Notary Public, D. C.

[SEAL.]

A. C. WALTER, *Witness.*
C. F. RAMSDELL, *Witness.*

City of Washington, District of Columbia.
My commission expires Nov. 1897.

Local Board Appraisal of Property and Report on Application.

To the board of directors at home office of the New-South Building and Loan Association of New Orleans, La.:

We, the undersigned, hereby certify that we are well acquainted with the value of the real estate described in the foregoing application of Aaron Bradshaw for a loan of $24,000 that we have carefully appraised the said real estate, and that in our judgment the present cash market value of the ground, exclusive of buildings is $10,080

And that the cash value of the buildings on the lot at present is .....

And we will see that the amount of this loan will be expended for buildings, repairs, etc., to wit 24,000

Making a total value of $34,080

311 And that the property would bring at forced sale in cash, at the present time, lots only 10,000

We also state that the condition of the property is truly set forth by the applicant in his accompanying statements; that we believe his answers to the questions contained therein are true, and that the property is so situated that it will not be likely to depreciate in value in the future, and that the loan is a desirable one for the association to make.

We are not interested in said premises, nor in the result of this application for a loan. We also certify that we are well acquainted with the credit, reliability and business promptness of said party, and state that his credit is good, and we believe that he will pay the interest, premiums and installments promptly, and will faithfully keep and perform the conditions of the bond which he may give to your association. We recommend the loan to be granted.

The population of our town in 1880 was 230,000; in 1885, 240,000; at present it is 250,000.

In testimony whereof, we, the officers and directors of the local board at Washington, D. C., have set our hands, this 25th day of July 1893.

—— ——,
Loan Committee.
—— ——,
Local Board.
—— ——, *President.*
—— ——, *Secretary.*
—— ——, *Attorney.*

JOHN A. BUTLER, JR., *Director.*
HOWARD F. WOOD, *Director.*
B. STANLEY SIMMONS, *Director.*

Subscribed and sworn to before me, this 25th day of July, 1893.

LETA M. MORSE,
Notary Public, D. C.

[SEAL.]

312 Endorsed.

Application No. 1482, loan No. 1066.

Application for a Loan.

Name: Aaron Bradshaw.
Town: Washington.
County: D. C.
Amount: $24000.
D. Issued 8/2/93. Returned Aug. 15, 1893.
Approved Aug. 16, 1893.

Report of Loan Committee.

Approved for $20000. to be used in making the 4 last payments on a house to be erected on the security property at a cost of not less than $24000. Applicant to first pay $4000 himself. Loan to be made in instalments of $5000. each and on the conditions set out in the report of the chairman of the loan committee. Last instalment 10 days after completion of the building and delivery of same free of all liens. Policy of insurance
$20000.

J. H. KENNARD,
A. C. L. C.

Aug. 16, 1893.

(Stamp.)

AUG. 21, 1893.

I have no reason to doubt that the report of the local attorney as herein made is true and that the title to the property named is —.

——— ———,
General Attorney.

313 "EXHIBIT W. W. M. No. 2."

Filed April 29, 1902.

District of Columbia.

App. No. 1482. Loan No. 1066.

Aaron Bradshaw, Washington.

$20000. 5 checks $4 m. $3 m. $4 m. $2 m. $7 m.

To be used as stated on reverse hereof
To be sent forward upon return of papers as stated on reverse hereof—
Take description of property from —
See notes on the abstract.

Bond against mechanic's lien furnished.
Bid for loan entirely filled out and signed by app.

Bond dated and signed by app.
Deed of trust signed by app. and wife after being filled out and dated.
Same duly executed, acknowledged and recorded.
Abstract brought down to date of deed of trust.
Att'y's final certificate signed showing:
Property free from all encumbrance and
Taxes on same paid through 1893
Deed of trust entered in abstract.
Certificate of stock transferred.
Agreement as to taxes signed.
Agreement as to insurance signed.
Mortgagee clause of ass'n annexed and
Policy of ins. assigned to cover amts. forwarded
Affidavit of contractor signed.
5 local board certificates signed.
5 builder's receipt- signed.
$346.67 returned in the papers to cover;
$66.67 interest and premium to 1st November
280—dues Sept. & October.
Return: All of above papers when properly executed with $346.67.
Papers forwarded Oct. 20/93.

314 Endorsed.

Approved for $20000 to be used in making the 5 last payments on a house to be erected on the security property at a cost of not less than $24000 Applicant to first pay $4000 himself. Loan to be made in instalments of $4000, 3000, 4000, 2000 & 7000 and on the conditions set out in the report of the chairman of the loan committee. Last instalment 10 days after completion of the building and delivery of same free of all liens. Policy of insurance $20000.

The amount of each installment will be forwarded to the local att'y to be delivered to borrower only on written certificate duly signed by

Pres't of local board
Att'y " "
Architect " " B. S. Simmons

Installments will be forwarded in accordance with letter accompanying the papers upon receipt of proper certificates—provided questions concerning liens of material-men can be answered satisfactorily.

315 "EXHIBIT W. W. M. No. 3."

Filed April 29, 1902.

New South Building and Loan Association.

NEW ORLEANS, *Oct.* 23*rd*, 1893.

In the Matter of AARON BRADSHAW. Application No. 1482, Loan No. —.

Local attorney New South B. & L. Ass'n, Washington, D. C.

Walter H. Acker, attorney.

DEAR SIR: We beg to enclose herein all papers necessary to complete the loan of this ass'n to Aaron Bradshaw, of your city, and although all the steps to be taken are enumerated on the slip which we enclose herein, we think it better, as this is the first loan you have attended to for us, to repeat those instructions more fully.

The amount of the loan is $20,000 and is to be used in helping applicant erect upon the property offered as security four houses at an aggregate cost of not less than $24,000. The applicant is to pay the first $4,000 himself, and the ass'n to advance the other instalments as follows:

1st. The security property is to be cleared of all encumbrances and a trust deed in favor of this ass'n placed upon it in the amount of $20,000 before any material is delivered or work done.

316 2nd. When the first floor joists are laid a proper certificate furnished you, that all brick and stone necessary to build with, to an amount of not less than $3,030.00 has been paid for and ready for delivery or actually delivered and $970.00 worth of work done and paid for the first instalment of $4,000 to be paid by the ass'n.

3rd. When the second floor joists are laid and proper certificate is furnished you, showing that $4,000 worth of work additional to the first $970, has been completed and paid for, the second instalment of $3,000 is o be paid.

4th. When the roofs are on and certificates furnished, showing that $7,970 worth of work has been done and paid for in the erection of the houses on the security property (over and above the $3030.00 for the brck and stone) the third instalment of the loan, $4,000, is to be paid

5th. When the work is almost entirely finished and certificate furnished showing that $11,970 worth of work has been done and paid for in the erection of the houses on the security property, the fourth insalment of $2,000 is to be paid.

6th. Ten days from the date of completion of the houses and delivery o' same free of all liens, proper certificate being furnished to that effect or to the effect that the houses did cost $24,000 and

2 1

have beenentirely paid for (or lack of complete payment before the

$7,000, being the last instalment of the loan) the last instalment of $7,000 will be paid. Upon return of the papers properly executed, we will send forward the first instalment of the loan.

The proper papers being received before the 30th of October,
317 1893, we will send on the second instalment of the loan.

The proper papers being received before the 1st of November 1893, we will send on the third instalment of the loan.

The proper papers being received before the 15th of November, 1893, we will send on the fourth instalment of the loan.

Proper papers being on file before the 10th of December, 1893, we will send on the fifth and last instalment of the loan.

The deed of trust on page 22 of the abstract, must be paid and cancelled of record and the case of N. B. Ashley, *et als. vs.* J. H. Walter *et als.* must be fully and finally disposed of. Was this the effect of the decree of the 1st of July 1893? We note in that decree the words "without prejudice." Please advise us as to the exact purport of this expression. The deed of trust to this ass'n must be filed so as to afford us the best possible protection against any claim of material men that might arise. The instalments of the loan will be sent forward to you, and you will turn over same only upon certificate as to each instalment signed by the president of the local board and the architect of the local board, B. S. Simons, this certificate you will then sign yourself and return to us with proper vouchers. Upon receipt of the papers, you will sign the attorney's first certificate annexed to the abstract of title returned herewith, and upon filing of the deed of trust, you will sign the attorney's final certificate hereto annexed and return same with the abstract.

All charges in connection with the loan are to be borne by
318 Mr. Bradshaw, including especially the amount due for your services and the amount to cover cost of recording the deed of trust and other instruments to this ass'n.

Very truly, NEW SOUTH BUILDING & LOAN ASS'N.
J. ARMSTRONG, *Ass't Attorney.*

P. S.—We have never been able to obtain a complete and satisfactory answer to our questions regarding the lien accorded under the laws of the District of Columbia, in favor of contractors, furnishers of material and laborers. If, at the time our mortgage is placed upon the property, there are no liens or claims recorded against the property, would a contractor, furnisher of materials or laborer have a lien superior to ours for work done or materials furnished in the construction of houses upon the security property? If they would, we do not desire the papers to be completed, unless the rights of such contractor, furnisher of materials or laborer can be waived, and if such waiver can be given and be binding upon the party, we desire to have the same executed in proper shape before our mortgage is recorded or before any steps are taken in the matter, and it is only under the assumption that our mortgage, as soon as recorded, would have precedence over all claims or liens recorded thereafter, that these papers are sent forward for execution.

319 Equity No. 22257.

"EXHIBIT W. W. M. No. 4."

Filed Ap'l 29, 1902. W. W. Millan, examiner in chancery.

Chain of Title.

No. 20497. For J. H. Walter, Esq.

From the records of the Real Estate Title Insurance Company of the District of Columbia.

(This company assumes no responsibility for the due execution or legal effect of any instrument referred to in this chain, nor is this chain to be used as an abstract of title issuing from this office, but is furnished to attorneys to facilitate an examination in the record office only.)

The following are all the instruments of writing (being numbered 1 to 22, inclusive) of record in the office of the recorder of deeds for the District of Columbia, through June 2nd,—A. D. 1893, affecting the title to the following described real estate.

Lots 40 to 53 both inclusive in John H. Walter's subdivision of lots in square 939, as per plat recorded in Liber 19 folio 47 of the records of the office of the surveyor of the District of Columbia.

Fee title.

In the division between the original proprietor and the United States commissioners, lots 1, 2, 3 and 20 *et al.* were allotted to George Walker.

Oct. 13, 1792.

320 1. George Walker to Overton Carr. } Mortgage. Liber D, folio 91.

2. Released. Liber G, folio 559.

The Real Estate Title Insurance Co. of the District of Columbia.

3. George Walker to Wm. Prout. } Mortgage. Liber L, folio 152.

4. George Walker to Wm. Prout. } Mortgage. Liber L, folio 280.

[Written across the face:] The Real Estate Title Insurance Co. of the District of Columbia.

5. George Walker
to
Cyrus Walker.
} Assignment.
Liber V, folio 140.

[Written across the face:] The Real Estate Title Insurance Co. of the District of Columbia.

6. George Walker
to
John Baker & Edward Dawes.
} Trust.
Liber W. B. 4, folio 422.

[Written across the face:] The Real Estate Title Insurance Co. of the District of Columbia.

7. Mary Bradley (*née* Prout), wife of Henry; Jonathan & Rob't Prout, only surviving heirs of Wm. Prout, deceased, assignees in bankruptcy of George Walker, deceased,
to
John Carroll Brent, tr. in eq. cause 738, rules 5.
} Quit-claim.
Liber 806, folio 83.

321

[Printed across the face:] The Real Estate Title Insurance Co. of the District of Columbia.

8. Margaret W. S. Chrisholme, widow of John S. Chrisholme; Jane Walker, unmarried; Christiana W. Grahame *et vir*, Robert Gra*hme*; Margaret S. Drummond (Viscountess Strathallan), *et vir* James D. (Viscount Strathallan); Agnes W. Boyle, widow of Alexander Boyle; Chas. J. M. Lefroy *et ux.*, Elizabeth C. McC.; Clement G. Lefroy, widower; James Aitken, Russell Aitken, Henry Aitken, John Aitken, Robert Aitken, Jesse Aitken, all unmarried, sole heirs of James Walker,
to
John H. Walter.
} Deed.
Liber 1423, folio 243.

[Printed across the face:] The Real Estate Title Insurance Co. of the District of Columbia.

9. John H. Walter, unmarried,
to
John Ridout & James Lowndes.
} Trust.
Liber 1423, folio 248.

322

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

10. Alex'r F. W. Reddoch *et ux.*, Emma; Marion Harnett, widow; Janet A. Berry *et vir*, George; Jas. Western, widower; Helen Read, widow,
to
John H. Walter.
Deed.
Liber 1438, folio 470.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

11. John H. Walter, unmarried,
to
John Ridout & Jas. Lowndes.
Trust.
Liber 1438, folio 474.

[On the margin:] The Real Estate Insurance Co. of the District of Columbia.

12. George Goodyear, unmarried; Richard Goodyear, widower, heirs of Ralph Walker,
to
John H. Walter.
Deed.
Liber 1522, folio 473.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

323 13. Jane Patrick, unmarried,
to
John H. Walter.
Deed.
Liber 1522, folio 481.

[On the margin:] The Real Estate Insurance Co. of the District of Columbia.

14. John Patrick, unmarried,
to
John H. Walter.
Deed.
Liber 1522, folio 477.

[On the margin:] The Real Estate Insurance Co. of the District of Columbia.

15. John H. Walter, unmarried,
to
John Ridout & James Lowndes.
Trust.
Liber 1541, folio 94.

[On the margin:] The Real Estate Insurance Co. of the District of Columbia.

324 16. Margaret R. Walker, widow; Ralph Walker *et ux.* Emily M.; Robert W. Chandler, widower; William Chandler *et ux.* Elizabeth; Margaret Wright, widow; Mary A. Brilford *et vir* T. W.; Stephen Goodyear, widower; John Goodyear *et ux.* Annie; Diana Gobbett, widow; Jane Clifford *et vir* Charles; Ann Williams *et vir* George; Frances Goulding *et vir* George; James S. Denton *et ux.* Sarah A.; Edward M. Denton *et ux.* Emma M.; Frances Lavender *et vir* Henry; Joseph G. Chandler *et ux.* Ellen; Margaret Starling *et vir* William; John Hewison, widower; Sarah Edwards *et vir* George; Mary Gunston *et vir* Robert; Alice M. Sharpe *et vir* Dr. William; Ralph W. Hewison *et ux.* Edith; Caroline E. Cooper *et vir* William; William Hewison *et ux.* Annie; Emma F. Thom *et vir* Fred'k; Charles Hewison, unmarried; Mary Ann Chandler, widow of Joseph; Caroline E. Hewison, widow of Ralph Walker Hewison, Sr.; Annie Morrison, widow; Susanna A. Leete, widow; Mary Daws; Helen Stockwell *et vir* George; Elizabeth Teago *et vir* John; Edward J. Chandler, unmarried; Ellen Vallance, widow; Richard W. G. Chandler *et ux.* Emma; Jane E. Lockett, unmarried; Edward F. Hewison, unmarried; Mary Ann Chandler, afterwards Freeman, widow of Edward Chandler, *et vir*, John Freeman; James Dalziel, widower of Annie H., among the heirs-at-law of Ralph Walker, deceased,
to
John H. Walter.

Deed.
Liber 1522, folio 457.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

17. James Dalziel, unmarried,
to
John H. Walter.

Deed.
Liber 1544, folio 128.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

325 18. John Ridout, trustee,
to
John H. Walter.

Deed.
Liber 1561, folio 334.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

19. John H. Walter, unmarried, to Mary E. Bradshaw. } Deed. Liber 1723, folio 369.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

20. James Lowndes & John Ridout to Mary E. Bradshaw. } Release. Liber 1723, folio 370.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

21. Mary E. Bradshaw *et vir* Aaron to Lydia Hoagland, widow. } Deed. Liber 1726, folio 301.

[On the margin:] The Real Estate Title Insurance Co. of the District of Columbia.

326 22. Lydia Hoagland, widow, to John T. Arms & Samuel A. Drury. } Trust. Liber 1726, folio 303.

The Real Estate Title Insurance Co. of the District of Columbia.

If there are any parties interested whose names are not disclosed by the land records, please furnish for further examination.
Tax title not pursued.

THE REAL ESTATE TITLE INSURANCE CO.
OF THE DISTRICT OF COLUMBIA.

Through June 2, 1893.

Endorsed: App. No. 1482 Loan No. — New South B. & L. Ass'n. Aaron Bradshaw Claims of title Rec'd 19th June 1893.

327 *Certificate of Title.*

I have examined the title of lots numbered 40, 41, 42, 48, 49, 50, 51, 52 and 53, in John H. Walter's subdivision of lots in square 939, as per plat recorded in Liber 19 folio 47, of the records of the office of the surveyor of the District of Columbia—being embraced in original lots 2, 3 and 20, and consider the same good according to the record in Lydia Hoagland, subject to the deed of trust below noted.

I find of record dated in 1804 an assignement for the benefit of creditors executed by George Walker the then owner of the property of which caption is a part, conveying said property to one William Prout. This after such an elapse of time is of no importance, and

examiners in general so regard it. Then and additionally the record discloses that the said Hoagland has acquired the major part, that is three fifths of the legal estate in caption conveyed by said assignment.

The tax-title outstanding as to original lot 3 of which certain of the lots described in caption hereof are a part I regard as of no effect, for that, that the sale under which said title was derived was void and the deed thereon could therefore pass no title.

Although the record shows absolutely no title to caption in Joseph R. Ashley when living, or in his heirs when dead, yet in March, 1890, the latter instituted proceedings in equity (cause 12,318) against John H. Walter whose title is now vested in said Hoagland, claiming to be the owners of said property. This proceeding is still pending, but the docket shows an *in*disposed of motion made by the defendants to dismiss for failure to prosecute. I regard this suit as of no vital importance. It will undoubtedly be dismissed by the court.

There is an equity proceeding pending against said Hoagland, (No. 14,468) for partition, but it appears to relate to property other than that described in the caption.

The deed of trust referred to above as an encumbrance on said Hoagland's title is as follows:

328 Lydia Hoagland, widow,
to
John T. Arms & Samuel A. Drury. } Trust. Dated Sept. 14, 1892. Recorded Sept. 15, 1892. Caption.

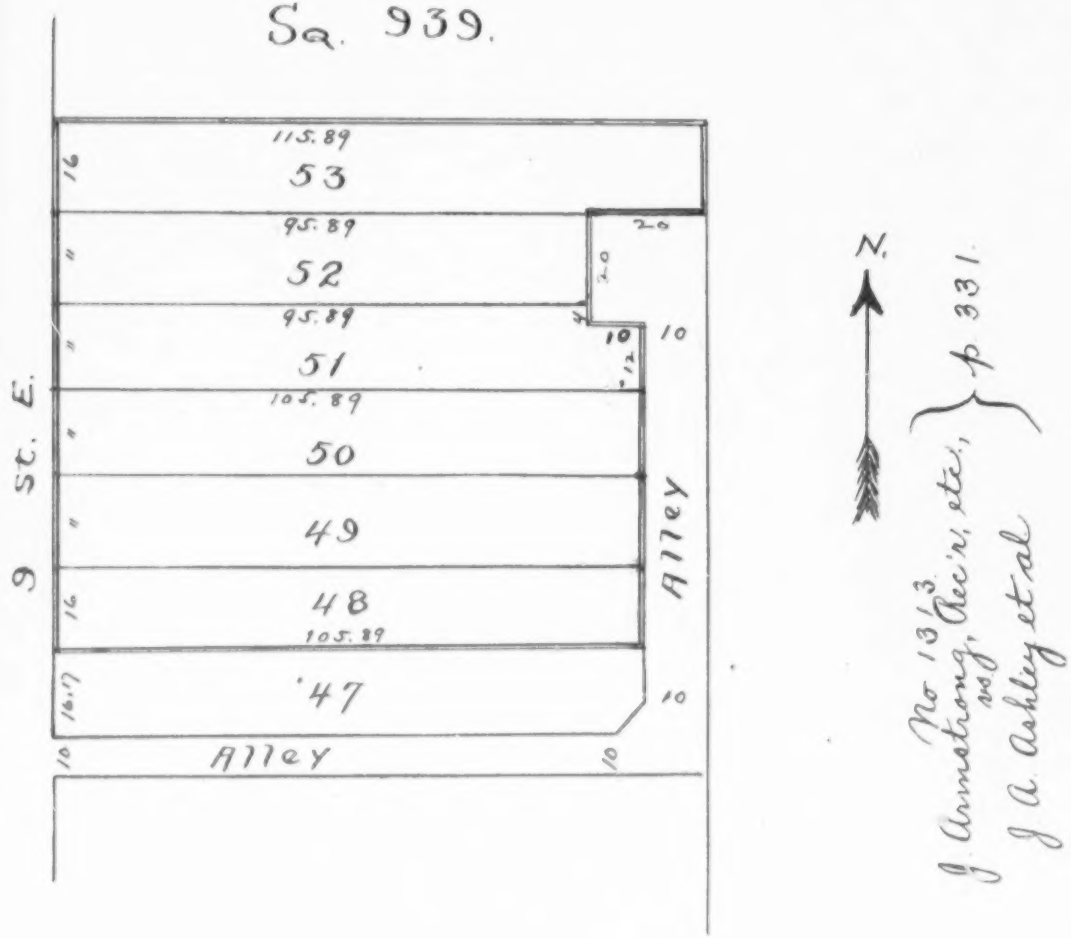
To secure Mary E. Bradshaw, ten thousand, one hundred and seventy six dollars, ($10.176.) purchase *chase* money. 9 notes numbered from 1 to 9; Nos. 1, 2 and 3 being for seven hundred and ninety two dollars ($792.) each, and Nos. 4, 5, 6, 7, 8 and 9 being for thirteen hundred dollars ($1300) each; 3 years, 6%, until paid, semi-annually;

Note 1 secured separately on lot 40;
Note 2 secured separately on lot 41;
Note 3 secured separately on lot 42;
Note 4 secured separately on lot 28;
Note 5 secured separately on lot 49;
Note 6 secured separately on lot 50;
Note 7 secured separately on lot 51;
Note 8 secured separately on lot 52;
Note 9 secured separately on lot 53;
The collector will certify as to taxes.

W. E. AUGHINBAUGH.

May 26, 1893.

THE DISTRICT TITLE INSURANCE COMPANY.



Book 19, folio 47. March 12, 1892.

Plat showing lots 48 to 53, inclusive, of John H. Walter's subdivision of lots, 3, 4 & 6, (of Mary Baldwin, et al. Book C. H. B. p. 41) Square 939 into lots 40 to 53, inclusive, and alley as shown above.

329 *Memoranda.*

This memorandø has reference to the accompanying chain of title. The figures at the left of each paragraph corresponding to the figures at the left of each paragraph in the chain of title.

1. Mortgage referred to released. See Liber G, folio 559.

2. Mortgage referred to having been made and recorded over seventy five years ago is presumed by law to have been released.

4. Assignment referred to was made in 1804, and after such a lapse of time cannot effect title.

5. Assignment referred to was made in 1804, and after such a lapse of time cannot effect title.

6. The George Walker herein referred to is believed to have been another Walker.

7. 8. 10. Conveyances representing all the heirs of George Walker, 12. 13. 14. 16. 17. 18. the original owner, vesting title in John H. Walter.

9. 11. 15. Trust referred to in these paragraphs have all been released. See Liber 1723, folio 370.

330 Continuation of title.

Description lots forty-eight (48) to fifty-three (53), inclusive, of John H. Walter's subdivision of the lots in square nine hundred and thirty-nine (939) as per plat recorded in the office of the surveyor for the District of Columbia in Liber 19, folio 47.

The District Title Insurance Company of the District of Columbia

Doth hereby certify that from the first day of June, A. D. 1893, inclusive, through the twenty-third day of September, A. D. 1893, inclusive, there has been no change in the records in anywise affecting the title to the parcel of ground described above except the item numbered one (1) noted in the schedule marked "A," dated Sept. 23d, 1893, signed by Eugene Carusi; president and hereto annexed.

The collector of taxes will certify as to taxes.

THE DISTRICT TITLE INSURANCE COMPANY.
EUGENE CARUSI, *President.*

[SEAL.]
N. CARUSI, *Secretary.*

Issued to —

(Here follows diagram marked page 331.)

332 SCHEDULE "A," ABOVE REFERRED TO.

Caption.

Lots forty-eight (48) to fifty-three (53), inclusive, of John H. Walters' subdivision of lots in square nine hundred and thirty-nine (939), as per plat recorded in the office of the surveyor for the District of Columbia, in Liber 19, folio 47.

1. Nehemiah B. Ashley *et al.* *vs.* John H. Walter *et al.* } Equity. 12318, Docket 30. July 1st, 1893.

Dismissed for want of prosecution at complainant's cost, without prejudice.

EUGENE CARUSI, *Pres't.*

Sept. 23, 1892.

Endorsed.

No. 2604. Continuation of title received Sep. 28, 1893.

Lot 48 to 53. Square 939.

Take notice that a charge of two dollars will be made for each additional instrument noted on this certificate within one month from its date. From the District Title Insurance Company, 610 Thirteenth street, northwest, Washington, D. C.

Officers: Eugene Carusi, president—Wm. F. Mattingly, vice-president, Nathaniel Carusi, secretary, A. T. Britton, treasurer.

Trustees: A. T. Britton, Jas. L. Barbour, George W. Brown, Eugene Carusi, Nathaniel Carusi, Mills Dean, Lewis J. Davis, Washington Danenhower, Frank Hume, John A. Hamilton, Charles W. Hanly, Charles A. James, Wm. F. Mattingly, Simon Wolf.

333 Continuation of title.

Lots forty-eight (48) to fifty-three (53), both inclusive, of John H. Walter's subdivision of lots in square nine hundred and thirty-nine (939), as per plat recorded in the office of the surveyor for the District of Columbia, in Liber 19, folio 47.

I have continued the certificate of title of Mr. W. E. Aughinbaugh dated May 26th 1893 to the date hereof and find the following the only changes of record affecting caption:

1. Nehemiah B. Ashley *et al.* *vs.* John H. Walter *et al.* } Equity No. 12318, Docket 30. July 1st, 1893.

Dismissed for want of prosecution at complainant's cost, without prejudice.

2. John T. Arms and Sam'l Drury to Lydia Hoagland. — Release Oct. 28th, 1893. Recorded Oct. 30th, 1893. Of trust recorded in Liber 1726, folio 303.

3. Lydia Hoagland, widow, to Leta M. Morse. — Deed. Dated Sept. 14th, 1892. Recorded Oct. 30th, 1893. Lots 40, 41, 42, 48, 49, 50, 51, 52, 53, sq. 939. Caption & other property.

4. Leta M. Morse, unmarried, to Aaron Bradshaw. — Deed. Dated Oct. 28th, 1893. Recorded Oct. 30th, 1893. Lots 48 to 53, sq. 939.

5. Aaron Bradshaw *et ux.*, Mary E., to John Hanson Kennard, Johnston Armstrong. — Trust. Dated Oct. 28th, 1893. Recorded Oct. 30th, 1893.

All of caption to secure New South B. & L. Ass'n. Bond of $40000—for payment of $20000—Loan.

6. James W. Pumphrey *vs.* Aaron Bradshaw. — At Law. No. 25942. $31.—int. & costs now $52.50.

334 7. Charles L. Bu Boird, Otis Bigelow *vs.* Aaron Bradshaw. — At Law. No. 31561. $115.—Jan'y 24th, 1891.

8. Henry N. Rheam *vs.* John S. Belt & Aaron Bradshaw. — At Law. No. 33700. $50.50 Nov. 5th, 1892. Justice of peace.

Have not examined as to taxes. Nos. 5, 6, 7, 8, are liens *vs.* caption in name of Aaron Bradshaw.

WALTER H. ACKER.

Oct. 30th, 1893—2 p. m.

Since above date judgements at law mentioned in No. 7 has been marked satisfied on the records and is no longer a lein *vs.* caption. Judgement at law mentioned in No. 8 has been entered to the use of Aaron Bradshaw & is not now a lien *vs.* caption.

WALTER H. ACKER.

Nov. 1st, 1893—3 p. m.

335 *Attorney's First Certificate.*

(Please attach to the abstract.)

As the abstract of title was made by Mr. W. E. Aughinbaugh I have not verified the same. I have continued it to Nov. 1st '93 and find as below set forth. According — Mr. Aughinbaugh's report the only liens *vs.* Lydia Hoagland were trust in Liber 1726 folio 203 and suit in equity No. 12318 docket 30, and that, when the above named liens and encumbrances are paid and discharged, a mortgage or trust deed upon the property described will be a first lien upon the same, and that all taxes up to and including those for the year 1892 have been paid. 2nd half not paid.

Signed at Washington, D. C., this 27th day of October 1893.

WALTER H. ACKER,
Attorney and Abstractor.

Attorney's Final Certificate.

(To be signed after the filing of the deed of trust.)

* In addition to the satisfaction of any previous existing mortgage or trust-deed, the money will in no case be paid over until the above mentioned bonds or notes have been surrendered and cancelled, and liens securing same released of record.

I hereby certify that I have carefully examined the public records of the District of Columbia from May 26th '93 to Nov. 1st '93 and find that the mortgages before mentioned, and all other liens and encumbrances named in W. E. Aughinbaugh's first certificate, or that have since been created, have been satisfied and discharged of record, that all bonds or notes secured by such liens or encumbrances have been cancelled and surrendered as follows, to wit: Excepting judgment at law No. 25942 for $31—yet unreleased trust to Arms & Drury cancelled and released Oct. 30th 1893

"That there are no proceedings commenced in the State or United States courts which affect this land; that all taxes assessed against this property or personal taxes against its owner or against any grantor that would be a lien on the said property now due 1st half of '94 not paid, although not delinquent, have been paid, and that in my opinion the title is good and valid in fee simple in Aaron Bradshaw, subject to above judgement and, subject only to the
336 trust-deed of the New-South Building and Loan Association, of New Orleans, La., which is described in the abstract to which this certificate is attached.

Signed at Washington, D. C., this first day of November, 1893.

WALTER H. ACKER,
Attorney and Abstractor.

Endorsed: N. S. B. & L. Ass'n. Application No. 1482 Loan No. —. Abstract of title of lands of Aaron Bradshaw, Washington, D. C., [State of Virginia].*

[Endorsed:] Armstrong *s.* Ashley. Title certificate. Abstracts & contractor's ex.

337 "EXHIBIT W. W. M. No. 5."

Filed April 29, 1902.

WASHINGTON, D. C., *Oct.* 31*st*, 1893.

Aaron Bradshaw being duly sworn, deposes and says—

1. That he is a resident of the District of Columbia and the owner of lots 48 to 53 inclusive of John H. Walter's subdivision of lots in square 939.

2. That said property is free and unincumbered, with the exception of a deed of trust to John Hanson Kennard and Johnston Armstrong to secure a loan of $20000 from the New-South B. & L. Ass'n.

3. That at the time said deed of trust was put on record viz: Oct. 28th 1893 he had not consum-ated any contract with builders or material men for purposes of improving the aforesaid lots.

4. That the deed of trust to said Kennard and Armstrong is the first lien against said property.

5. That at the time of recording the above trust no material (other than brick) had been delivered on the aforesaid property and excavating had not been commenced.

In testimony of the above he hath hereunto set his hand and seal on the day above written.

AARON BRADSHAW. [SEAL.]

Witness:
LETA M. MORSE.

Signed, sealed and sworn to before me a notary public, by the aforesaid Aaron Bradshaw on the 31st day of October, A. D. 1893.

LETA M. MORSE.
[SEAL.] *Notary Public, D. C.*

338 EXHIBIT W. W. M. No. 6.

Filed April 29, 1902.

(*Local-board and Builder's Certificate.*)

Application No. 1482. Loan No. —.

Certificate No. 1. $4,000.

This is to certify that we have examined the property upon which Aaron Bradshaw secured a loan from the New-South Building and Loan Association of New Orleans, La., in the amount of $20,000

[* Words enclosed in brackets erased in copy.]

and find that at least $970.00 worth of work has been done upon the same in the erection of houses thereon and paid for in further evidence of which fact the receipted bill of the builder and contractor is hereto annexed in the amount of $970.00 and we certify that building material costing $3030.00 has been purchased by said Bradshaw and paid for by him as per receipt exhibited.

JNO. H. WALTER, *President.*
R. STANLEY SIMMONS,
Local Architect.
WALTER H. ACKER,
Local Attorney.

Aaron Bradshaw to F. M. Angelo, contractor, Dr.

For construction of 6 houses on the property above specified, according to contract price of $24000 including materials costing $3030 paid for by A. Bradshaw, being the 1st payment thereon	970–
Materials *bought furnished* and paid for	3030
Received previously	
Total	$4000 00

Received above amount,

F. M. ANGELO, *Builder.*

339 Application No. II. Loan No. —.

Certificate No. II. $4,970.00.

This is to certify that we have examined the property upon which A. Bradshaw secured a loan from the New-South Building and Loan Association of New Orleans, La., in the amount of $20000 and find that at least $4970.00 worth of work has been done upon the same in the erection of 6 houses thereon, in further evidence of which fact the bill of the builder and contractor is hereto annexed in the amount of $4970 which bill we approve.

JNO. H. WALTER, *President.*
B. STANLEY SIMMONS,
Local Architect.
WALTER H. ACKER,
Local Attorney.

A. Bradshaw to F. M. Angelo, Dr.

For construction of a house on the property above specified, according to contract price of $24000 including materials costing $3030 paid for by A. Bradshaw being the 2nd payment thereon	($4000.)	$4000.00
Received previously	(970.)	970.00
Total	$4970.	$4970.00

Received above amount,

F. M. ANGELO, *Builder.*

340 Application No. 1482. Loan No. —.

Certificate No. III. $7,970.00.

This is to certify that we have examined the property upon which A. Bradshaw secured a loan from the New-South Building and Loan Association of New Orleans, La., in the amount of $20000 and find that at least $7970.00 worth of work has been done upon the same in the erection of 6 houses thereon, in further evidence of which fact the bill of the builder and contractor is hereto annexed in the amount of $7970.00 which bill we approve.

JNO. H. WALTER, *President.*
B. STANLEY SIMMONS,
Local Architect.
WALTER H. ACKER,
Local Attorney.

A. Bradshaw to F. M. Angelo, Dr.

For construction of a house on the property above specified, according to contract price of $24000 including materials costing $3030 furnished by A. Bradshaw being the 3rd payment thereon	$4000
Received previously	3970
Total	$7970

Received above amount,

F. M. ANGELO, *Builder.*

341 Application No. 1482. Loan No. —.

Certificate No. IV. $13,970.

This is to certify that we have examined the property upon which A. Bradshaw secured a loan from the New-South Building and Loan Association of New Orleans, La., in the amount of $20000 and find that at least $13790.00 worth of work has been done upon the same in the erection of 6 houses thereon, in further evidence of which fact the bill of the builder and contractor is hereto annexed in the amount of $13970.00 which bill we approve.

JNO. H. WALTER, *President.*
B. STANLEY SIMMONS, *Local Arch.*
WALTER H. ACKER, *Local Attorney.*

A. Bradshaw to F. M. Angelo, Dr.

For construction of 6 houses on the property above specified, according to contract price of $24000 including the materials costing $3030 furnished by A. Bradshaw being the 5th payment thereon	$2000.00
Received previously	$11970.00
Total	$13970.00

Received above amount,

F. M. ANGELO, *Builder.*

342 Application No. 1482. Loan No. —.

Certificate No. VI. $20,970.

This is to certify that we have examined the property upon which A. Bradshaw secured a loan from the New-South Building and Loan Association of New Orleans, La., in the amount of $20000 and find that at least $20970 worth of work has been done upon the same in the erection of 6 houses thereon, in further evidence of which fact the bill of the builder and contractor is hereto annexed in the amount of $20970 which bill we approve.

JNO. H. WALTER, *President.*

I further certify that the houses have been completed 10 days and are worth $24000.

B. STANLEY SIMMONS, *Local Arch.*

I certify no liens in favor of laborers or furnishers of material have been filed.

WALTER H. ACKER, *Local Att'y.*

April $\frac{7}{8}$th $\frac{97}{9}$th 2 p. m.

A. Bradshaw to F. M. Angelo, Dr.

For construction of 6 houses on the property above specified, according to contract price of $24000 including materials costing $3030 furnished by A. Bradshaw being the last payment thereon	$7000
Received previously	13970
Total	$20970

Received above amount,

F. M. ANGELO, *Builder.*

343 EXHIBIT W. W. M. No. 7.

Filed April 29, 1902.

Affidavit of Contractor.

DISTRICT OF COLUMBIA:

Before the undersigned authority personally appeared Frank M. Angelo to me well known, who, being by me duly sworn, said:

That he is the contractor who undertook to erect 6 certain buildings for Aaron Bradshaw in Washington, D. C. for the sum of $24000; that the said buildings were completed in accordance with the terms of the contract, on the 28th day of March 1894 and the same were delivered to, and accepted by, Aaron Bradshaw on said

date; and that all debts incurred for material, or labor in erecting said building and completing said contract have been paid.

FRANK M. ANGELO.

Sworn to and subscribed before me, this 28th day of March, 1894.

LETA M. MORSE,
[SEAL.] *Notary Public, D. C.*

N. B.—This affidavit may be made before any officer authorized to administer an oath.

344 EXHIBIT W. W. M. No. 8.

Filed April 29, 1902.

Auctioneers.

Trustee's sale of six valuable three-story brick and stone dwellings, known as Nos. 215, 217, 219, 221, 223, and 225 Ninth street N. E.

By virtue of a certain deed of trust, bearing date on the 28th day of October, A. D. 1893 and duly recorded among the land records of the District of Columbia in Liber No. 1860, folio 324, *et seq.*, and at the request of the holder of the note secured thereby, we will offer at public auction in front of the premises, on Wednesday the 18th day of September, A. D. 1894 at five o'clock p. m. the following described real estate, situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as and being lots numbered forty-eight (48), forty-nine (49), fifty (50), fifty-one (51), fifty-two (52) and fifty-three (53) of John H. Walter's subdivision of lots in square nine hundred and thirty-nine (939) as per plat recorded in Liber 19, folio 47 of records of the office of the surveyor of the District of Columbia, together with the improvements thereon.

Terms: The aforesaid houses and lots will be sold separately. All of the purchase money to be paid in cash. A deposit of $200 will be required at the time of sale. All conveyancing, recording
345 and notarial fees at the cost of the purchaser. Terms of sale to be complied with within ten days from the day of sale, otherwise the trustees reserve the right to resell the property at the risk and cost of defaulting purchaser after five days' notice of such resale by advertisement in some newspaper published in the city of Washington, D. C.

JOHN HANSON KENNARD, *Trustee.*
JOHNSTON ARMSTRONG, *Trustee.*

346 EXHIBIT W. M. M. No. 9.

Filed April 29, 1902.

Walter H. Acker, attorney at law.

Received Sep. 13 1894.
Ans. Sep. 14 1894.

WASHINGTON, D. C., *Sept.* 11, 1894.

J. H. Kennard, Esq.; New-South B. & L. Ass'n, New Orleans, La.

DEAR SIR: *In re* Aaron Bradshaw loan. On Sept. 6th, '94, Mr. Bradshaw called on me in refr. to the claim you hold *vs.* his lots Nos. 48 to 53 inclusive sq. 939, and made the following proposition viz:

That he would deed the property to me in trust to collect the rents, pay the taxes, repairs and insurance and turn the bal. over to you on acc't of his dues 'till a cloud he now has on his title was removed, in wh. event he could get a straight loan & pay you up in full. His call was in response of a note from me requesting him to do so. On examining a title last week I discovered that there were several suits *vs.* Bradshaw & others, at law, wh. were not reported in Mr. Aughinbaugh's abstract—The enclosed notes will explain the situations. These suits involve the title to the lots on wh. the Bradshaw loan was made and while they may not amount to much, being based on a tax title with no adverse possession, yet should have been mentioned in the abstract. Mr. Aughinbaugh reported the equity suit, but failed to note the suits at law, my continuation dates from May 26th–93. On looking into the matter carefully I find that the Ashleys claim under an old tax title *a* also claim adverse
347 possession. In order to establish a title at law under a tax title 20 years' open adverse possession must be shown. These suits involve the whole title of John Walter & embrace about ¼ of the sq. 939. Bradshaw obtained title thro. Walter. When informed of the suits informed me that he did not know of the same 'till after the houses were finished. That he had investigated matters and had sufficient affidavits to show the Ashleys never had possession of the property or that the same never was enclosed. It is a question of fact. If the lots were not enclosed if the Ashleys were not in possession, then they have no title. At all events you need Bradshaw's help. He appears to be well known in the neighborhood of these houses, has lived there a long time & doubtless has influence enough with his neighbors to prove his statements, especially since he has several thousand dollars in the property. The question with me has been, would it be advisable to proceed with the sale at present and get his enmity. The suit is docketed & is liable to come up at this present term—You are largely interested in this unfortunate affair and ought to proceed cautiously. I have considered it best not to advertise as yet. Under the circumstances I should advise

you to let me get a power of att'y from Bradshaw, to collect the rents, pay the taxes & insurance & repairs & turn the bal. over to you on account of his dues. When suit is settled then either you get your money in full or sell the property. Should you sell at present you would get the property and—have to defend the suit without his help. You could not sell to others while the suit is pending. From all I can gather I can see but one result of
348 the suit—If you are going to be in this city, on the 18th, suppose we put the matter off 'till then. I can have Bradshaw here to meet you & discuss the whole matter. The houses are now rented at $120. per month. If you only intended to come to Washington for the purposes of selling this property, then I would not undertake the trip. Your association ought to — represented in this trial. While Bradshaw has an able att'y yet I have little confidence in B. & should want to be certain there was to be no selling out, I may be too suspicious, yet at all events you ought to be represented. Should you think it necessary or convenient to be here, please bring the notes of title & plat of sq. with you, otherwise return them by mail.

Respt., WALTER H. ACKER.

Endorsed: Aaron Bradshaw.

Acker calls attention to the cloud on this title, & recommends that we do not sell B. out but co-operate with him in the title, fight & arrange his loan.
Sept. 14 1894.

349 EXHIBIT W. W. M. No. 10.

Filed —— —.

Know all men by these presents that we Aaron Bradshaw and Mary E. Bradshaw, his wife, of the city of Washington in the District of Columbia, for divers good causes and considerations, us and each of us thereunto moving have made, ordained, authorized, nominated, constituted and appointed, and by these presents do make, ordain, authorize, nominate, constitute and appoint Walter H. Acker, of said city our and each of our true and lawful attorney for us and each of us, and in our and each of our names and for our and each of our proper use and benefit, to take possession of all those pieces or parcels of ground and premises lying and being in the city of Washington, in the District of Columbia, and known as lots forty-eight (48), forty-nine (49) fifty (50), fifty-one (51), fifty-two (52) and fifty-three (53) of John H. Walter's subdivision of lots in square nine hundred and thirty-nine (939), as per plat recorded in Liber 19 folio 47 of the records of the surveyor's office of the District of Columbia as particularly described in a deed of conveyance of trust from said Aaron Bradshaw and Mary E. Bradshaw to John Hanson Kennard and Johnston Armstrong, duly recorded in Liber No. 1860 folio 324 *et*

seq., one of the land records of the District of Columbia, together with each and every of the buildings, improvements and appurtenances to the same belonging, or in any manner appertaining, and in our and each of our names, place and stead, to demand and recover by a suit or suits, either at law or in equity, the said lots or either of them and the said buildings, improvements and appurte-
350 nances; and from time to time, rent or lease out the said lots and buildings and appurtenances, or any one or all of them for such time or times, and upon such conditions or terms, and for such rental per month—quarter or year, as to our said attorney may seem advantageous and proper, and further to have, use and take all lawful ways and means in our or in each of our names or otherwise, as to our said attorney may seem best, for the recovery of the said real estate and any part or parts thereof; and also of said rental by suit or suits, attachment or attachments, or otherwise, and to compound and agree for the same, and acquittances or other sufficient discharges for the same, for us or either of us and in our or each of our names to make and deliver; and to do all other lawful acts and things whatsoever concerning the premises as fully in any respect as we or either of us might or could do were we or either of us personally present at the doing thereof; and out of the said rents when collected, pay unto himself a commission or compensation of five per cent. on the amount of rents collected for his trouble and diligence in executing these presents.

Secondly, pay the taxes, (both general and special) that have been levied or shall hereafter be laid or levied upon the said pieces or parcels of ground, or either of them by the District of Columbia, or any other legal authority.

Thirdly,—keep the buildings and improvements insured and in repair, and the balance of said rent (if any) apply and pay over to "The New South Building and Loan Association of New Orleans, in the State of Louisiana, or its attorney or agent, in partial pay-
351 ment or on account of an indebtedness of said Aaron Bradshaw to said association, as is evidenced by the said deed of trust duly recorded in said Liber 1860 folio 324 *et seq.* of said land records.

In witness whereof, we, the said Aaron Bradshaw, and Mary E. Bradshaw, have hereunto set our hands and seals, this eighteenth day of September, A. D. 1894.

AARON BRADSHAW. [SEAL.]
MARY E. BRADSHAW. [SEAL.]

Signed, sealed and delivered in the presence of—
CLARENCE L. ALEXANDER.

DISTRICT OF COLUMBIA, *To wit:*

I, Clarence L. Alexander, a notary public in and for the said District, do hereby certify that Aaron Bradshaw and Mary E. Bradshaw, his wife both of the city of Washington in the District of Columbia

parties to a certain power of attorney bearing date the 18th day of September, A. D. 1894, and hereto annexed, personally appeared before me, in the said District the said Aaron Bradshaw, and Mary E. Bradshaw, his wife, being personally well known to me as the persons who executed the said power of attorney and acknowledged the same to be their act and deed.

And the said Mary E. Bradshaw being by me examined privily and apart from her husband and having the power of attorney fully explained to her, acknowledged the same to be her act and deed, and declared that she willingly signed, sealed and delivered the same, and that she wished not to retract it.

352 Given under my hand and official seal this 18th. day of September, A. D. 1894.

CLARENCE L. ALEXANDER,
[SEAL.] *Notary Public, D. C.*

Endorsed: 2 47 p. m. Received for record October 1, 1894 and recorded in Liber 1961. folio 90 *et seq.*, land records for the District of Columbia. C. H. J. Taylor, recorder.

353 "EXHIBIT W. W. M. No. 11."

Filed April 30, 1902.

Exhibit W. W. M. No. 11, is the same as Exhibit D to bill of complaint, except the endorsements which are as follows:

No. 1066.

In consideration of the sum of $1.00 and other sufficient security, the New South Building & Loan Association does hereby assign, transfer and deliver unto the American Trust & Banking Co. of Atlanta, Ga., this security to hold the same in trust, and sell or enforce the same for the purposes of carrying out and as provided in, a certain trust agreement between the said companies dated 14th Dec., 1893, to which reference is hereby made. In witness whereof the president of said New South Building & Loan Association has signed this instrument.

H. GARDES, *President.*

Bond $20000.00.

For Exhibit W. M. M. No. 11, see page 28.

354 "EXHIBIT W. W. M. No. 12."

Filed April 30, 1902.

Security Bond against Lien of Mechanics, etc.

Know all men by these presents, that we, Aaron Bradshaw and Joseph Fanning and James D. Burn of the city of Washington in the District of Columbia are held and firmly bound unto the New-South Building and Loan Association, of New Orleans, La., in the

sum of forty thousand dollars, to be paid to the said association or its assigns, at the city of New Orleans, La., to the payment whereof well and truly to be made, we bind ourselves heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this twenty-eighth day of November, 1893.

Whereas, the above bound Aaron Bradshaw having procured an advance of twenty thousand dollars, on two hundred shares of the stock of said association the entire sum of twenty thousand dollars thereof to be applied to the erection of six (6) buildings on lots 48, 49, 50, 51, 52 and 53 in square 939 in said city of Washington—said buildings to front on 9th street and be worth $24000.00 and to be fully completed within 3 months from the date hereof.

And whereas, the deed of trust dated 28th day of October, 1893 executed by the said Aaron Bradshaw and Mary E. Bradshaw, his wife to John Hanson Kennard and Johnston Armstrong trustees for the New-South Building and Loan Association to secure said advance, is by them guaranteed to be a first lien on said prop-
355 erty; and whereas, it is contemplated and mutually understood that no mechanic's lien shall be by any person or persons whomsoever, placed or charged, or attempted to be placed or charged, on said property, by reason of any contract or contracts made with any contractor, sub-contractor or material-man, for work done or material furnished in or upon said buildings so erected.

Now, the condition of the above obligation is such, that if the above-bound Aaron Bradshaw and Joseph Fanning and James D. Burn their heirs, executors and administrators, or any of them shall well and truly indemnify and save harmless the said New-South Building and Loan Association, of New Orleans, La., from and against any and all liens imposed or attempted to be imposed, on said property, by any person or persons whomsoever, as contractor, sub-contractor, laborers or material men, for services rendered, work performed, or material furnished in and upon said premises in the erection and completion of said buildings, and any and all damages, costs, charges, and expenses, and all actions or suits, whether groundless or otherwise, by reason thereof, and the said 6 houses shall be fully completed within 5 months from the date hereof otherwise to remain in full force. The said obligors hereby waive the benefit of their homestead exemption as to this bond.

Witness the following signatures and seals:

AARON BRADSHAW. [SEAL.]
JOSEPH FANNING. [SEAL.]
JAMES D. BURN. [SEAL.]

[Erased in the margin:] that this bond shall be null and void.

We assent to the clause in writing on margin hereof viz: "then this bond shall be null & void" being stricken out & forming no part of this bond.

JAMES D. BURN.
JOSEPH FANNING.

356 Before me the undersigned personally appeared Joseph Fanning and James D. Burn who being duly sworn, declared that they were well worth the sum of twenty thousand dollars over and above all their debts and liabilities.

Signed & sworn to before me this 28th day of Nov. 1893.

[SEAL.] LETA M. MORSE, *Notary.*

357 EXHIBIT W. W. M. No. 13.

Filed April 30, 1902.

Application for Membership.

Date, [July]* Aug. 24th, 1893. No. 7330.
(Leave this blank.)

— A. Bradshaw, P. O. 901 C. N. E., Washington, D. C. Occupation contractor, hereby subscribe for 200 shares of stock, and apply for membership in the New-South Building and Loan Association of New Orleans, La.

Agents are allowed to collect admission fee only. All other payments to be made to home office. Agents have no authority to appraise property, promise loans, or make any other contract binding the association, not authorized in printed matter issued by the association. No loans will be made on public halls, theatres, churches, meeting-rooms or school houses, nor on farms or plantations.

AARON BRADSHAW, *Applicant.*

V. BREVERD, *Agent.*

Endorsed: This application for stock is made in lieu of a former application by me for 360 shares. A. Bradshaw. July 25/93. R. 31" July 1893.

358 *Application for Membership.*

Date, August 24th, 1893. No. 7330.
(Leave this blank.)

I, Aaron Bradshaw, P. O., 901 C. N. E., Washington, D. C. Occupation contractor, hereby subscribe for 200 shares of stock, and apply for membership in the New-South Building and Loan Association of New Orleans, La.

Agents are allowed to collect admission fee only. All other payments to be made to home office. Agents have no authority to appraise property, promise, loans, or make any other contract binding the association, not authorized in printed matter issued by the association. No loans will be made on public halls, theatres, churches, meeting-rooms or school houses, nor on farms or plantations.

(S'g'd) AARON BRADSHAW, *Applicant.*

(S'g'd) V. BREVERD, *Agent.*
G

[Written across the face in pencil:] Duplicate.

[* Words in brackets erased in copy.]

359 "EXHIBIT W. W. M. No. 14."

Filed April 30, 1902.

New-South Building and Loan Association.

NEW ORLEANS, LA., *June 29th*, 1894.

W. H. Acker, Esq., # 704 14th Str. N. W., Washington, D. C.

DEAR SIR: As Mr. Aaron Bradshaw is now four months in arrears in the payment of his dues, interest and premium, the board of directors have asked that I should take the necessary steps to enable us to realize upon the amount advanced him, unless he can, by July 10th, pay at least one half of the arrears according to the statement enclosed herein. I write to know if you are in a position to take this foreclosure, and as it is of considerable magnitude, to know what percentage of fees you would charge for your services. I presume that you would make the customary division of fees with the attorney from whom the business is received, which, in this State, is one-third of the whole fee charged. Kindly let me hear from you at your earliest convenience, as we are determined to take steps on the date stated, unless a remittance is received.

Very truly,

J. ARMSTRONG,
Assistant Attorney.

360 "EXHIBIT W. W. M. No. 15."

Filed April 30, 1902.

New-South Building and Loan Association.

NEW ORLEANS, LA., *Aug. 8th* / 94.

W. H. Acker, Esq., 704 Fourteenth St. N. W., Washington, D. C.

DEAR SIR: I have your favor of the 3rd *In re* Bradshaw—& in reply to same beg to say that as the terms of the sale are left to the discretion of the trustees—Mr. Kennard and I both think the terms should be all cash. We understand that such terms would decrease the chance of selling to some outside purchaser, and that the ass'n would most probably be obliged to buy the houses but even if such be the case, it would be better policy for us to do that, than to sell ⅓ cash, as stated in the advertisement. The ass'n could most probably find purchasers in a few months, who would pay ⅓ cash, balance on the B. & L. plan—which would suit us better than to have the houses tied up on 6% interest without increasing our holding of stock.

If there is no objection to such change in the ad. kindly correct same & return for signature leaving the date blank.

Y'rs,

J. ARMSTRONG.

Abstract sent by express.

361 *Telegram.*

The Western Union Telegraph Company, Incorporated.

21,000 offices in America. Cable service to all the world.

* * * * * * *

AUG. 25, 189–.

Received at Corcoran bldg., S. E. cor. 15th & F Sts., Washington, D. C.

Dated New Orleans, La., 25.

To W. H. Acker, 704 14th St. N. W., Wash'n:

Fix Bradshaw sale for September eighteenth, Change advertisement answer.

NEW SOUTH BUILDING & LOAN ASS'N.

Endorsed: Aug. 25, '94. N. L. B. & L. A. N. O. La. Advertisement of Bradshaw's sale will be fixed for Sept. 18th. Walter H. Acker.

New South Building and Loan Association.

NEW ORLEANS, *Aug. 16th*, 1894.

Walter H. Acker, Esq., # 704 Fourteenth St. N. W., Washington, D. C.

DEAR SIR: I have your favor of the 13th inst., enclosing the advertisement which is returned herewith, signed by Mr. Kennard and myself. The date of the sale is fixed for the 12th of
362 September, Mr. Kennard has business calling him to New York on the 15th of September, hence the date named would be very convenient. We understand the force of your suggestion, showing that the association will probably be compelled to buy the property in, but for the reasons outlined in my last letter, we prefer to have the sale that way. When Mr. Kennard comes on, he will bring the bond given in the matter. Let us know the amount necessary to be forwarded to cover costs and other expenses, and will send the same at once.

Yours truly, J. ARMSTRONG,
Assistant Attorney.

New South Building and Loan Association.

In the Matter of AARON BRADSHAW. Loan 1066.

NEW ORLEANS, LA., *Aug. 27th*, 1894.

W. H. Acker, Esq., # 704 14th Str. N. W., Washington, D. C.

DEAR SIR: We beg to acknowledge receipt of your telegram of the 25th inst. reading as follows:

"Advertisement of Bradshaw sale will be fixed for September 18th."

This is entirely satisfactory, and Mr. Kennard is due to arrive in your city at 7 a. m., on the morning of the 18th, and will stop
363 at the Ebbett house. Kindly advise him as to where to meet you on that day, as he counts on you being present with him at the sale. Are there any papers or other documents that it will be necessary for him to bring with him?

Very truly,

NEW SOUTH BUILDING & LOAN ASS'N.

"EXHIBIT W. W. M. No. 16."

Filed April 30, 1902.

New-South Building and Loan Association, New Orleans, La.

New South Building & Loan Ass'n, New Orleans, La.

DEAR SIR: I have examined the plans and specifications of the six houses that Mr. Bradshaw proposes to build in square 939, fronting on 9th St. N. E., and find it will be necessary to use in the construction of the same 50.000 rough brick in each house, or a total of 300.000 in the six houses, also 3,500 pressed brick for the front of each house or a total of 21,000 in the six houses. I also find that the stone trimming for each house will cost $60.00 per house or $360.00 for the six houses, making a total outlay as follows:

300.000 rough brick at $7.50 per thousand	$2,250.00
21.000 pressed brick at $20.00 per thousand	420.00
Stone trimmings at $60.00 per house	360.00
Total	$3,030.00

B. STANLEY SIMMONS.

Aug. 29th, '93.

364 "EXHIBIT W. W. M. No. 17."

Filed May 6, 1902.

Copy. No. 18868. Copy.

The Real Estate Title Insurance Company of the District of Columbia, in consideration of thirty dollars to said company paid by —— —— doth hereby certify that as it appears by the record in said District, the title to the real estate described in the caption of the annexed certificate of title dated September 16th, A. D. 1892, and signed by M. Ashford namely, sub lots 40, 41, 42 and 48 to 53 inclusive in square 939 in the city of Washington, D. C., is not charged or encumbered by any unexpired trust, mortgage, lease, lien, judgment or decree appearing of record in said District or by any suit at law

or in equity pending in said District and in which said real estate is described except such as are noted or mentioned in said certificate This certificate is issued to —— —— and for — benefit only.

Witness the corporate seal and the signatures, respectively of the president and secretary of said company, hereunto affixed this sixteenth day of September, A. D. 1902.

M. ASHFORD, *President.*

GEORGE E. FLEMING, *Secretary.*

365 No. 18868.

Certificate of Title.

All of lots 40, 41, 42, 48, 49, 50, 51, 52, and 53, in John H. Walter's subdivision of lots in square 939, as per plat recorded in Liber 19, folio 47, of the records of the office of the surveyor of the District of Columbia, being embraced in original lots 2, 3, and 20.

I have examined the title to the parcels of ground above described, and consider the same good, according to the record, in Lydia Hoagland, subject to the following deed of trust, and such taxes as may be due, as to which the assessor will certify

There is an old trust dated in 1804 from George Walker, then the owner of said land, to William Prout, for the benefit of creditors, but I regard this as unimportant after this lapse of time.

Three fifths of the legal estate in said lots, conveyed by said trust is also vested in said Lydia Hoagland. There is also an outstanding tax title in original lot 3, but the tax sale was void and the tax deed passed no title.

On March 1, 1890, the heirs of Joseph R. Ashley filed a bill in equity (No. 12,318) against John H. Walter, then the owner and whose title is now vested in Mrs. Hoagland, claiming to be owners of said land, but the record shows no title whatever in said heirs or in said Joseph R. Ashley in his lifetime.

366 Lydia Hoagland, widow, to John T. Arms & Samuel A. Drury. } Trust. Dated Sept. 14, 1892. Recorded Sept 15, 1892. Caption.

To secure Mary E. Bradshaw, ten thousand, one hundred and seventy-six dollars ($10,176) purchase money.

9 notes numbered from 1 to 9; Nos. 1, 2 and 3 being for seven hundred and ninety two dollars ($792) each, and Nos. 4, 5, 6, 7, 8 and 9 being for thirteen hundred dollars ($1300) each; 3 years, 6% until paid, semi-annually;

Note 1 secured separately on lot 40;
Note 2 secured separately on lot 41;
Note 3 secured separately on lot 42;
Note 4 secured separately on lot 48;

Note 5 secured separately on lot 49;
Note 6 secured separately on lot 50;
Note 7 secured separately on lot 51;
Note 8 secured separately on lot 52;
Note 9 secured separately on lot 53.

M. ASHFORD.

September 16th, 1892.

(Here follow drawings marked pp. 367 & 368.)

369 "EXHIBIT W. W. M. No. 20."

Filed May 7, 1902.

No. 901 "C" St. N. E., Washington City, D. C.

SEPT. 25TH, 1893.

GENTLEMEN: Please find herewith enclosed continuation of title of certain lots in square No. 939, this city from June 1st 1893 to Sept. 23, 1893. The original certificate heretofore sent you shows condition of title to same time in June last. The two showing condition of title down to date.

As originally agreed between your gen'l agent Mr. Breverd and myself the title of the lots in question will be conveyed to me and my mortgage securing your company for its loan will be executed and recorded simultaneously and that as soon as the mortgage papers are rec'd from your office.

I have purchased the necessary bricks to complete the 6 houses and have them ready to haul upon the ground as soon as the papers are recorded. I hope there will be no further delay in my getting to work on the houses.

Very respectfully, AARON BRADSHAW.

To the New-South Building & Loan Ass'n, New Orleans, La.

370 "EXHIBIT W. W. M. No. 21."

Filed May 7, 1902.

No. 901 "C" street N. E., Washington, D. C.

MARCH 8TH, 1894.

The New-South Building & Loan Ass'n, New Orleans, La.

GENTLEMEN: I will thank you, at your earliest convenience, to forward the last instalment of loan. The buildings are about completed and I desire to be ready for the contractor when he turns them over to me.

The tax rec't mentioned in yours of recent date I forward herewith.

Very respectfully, &c., AARON BRADSHAW.

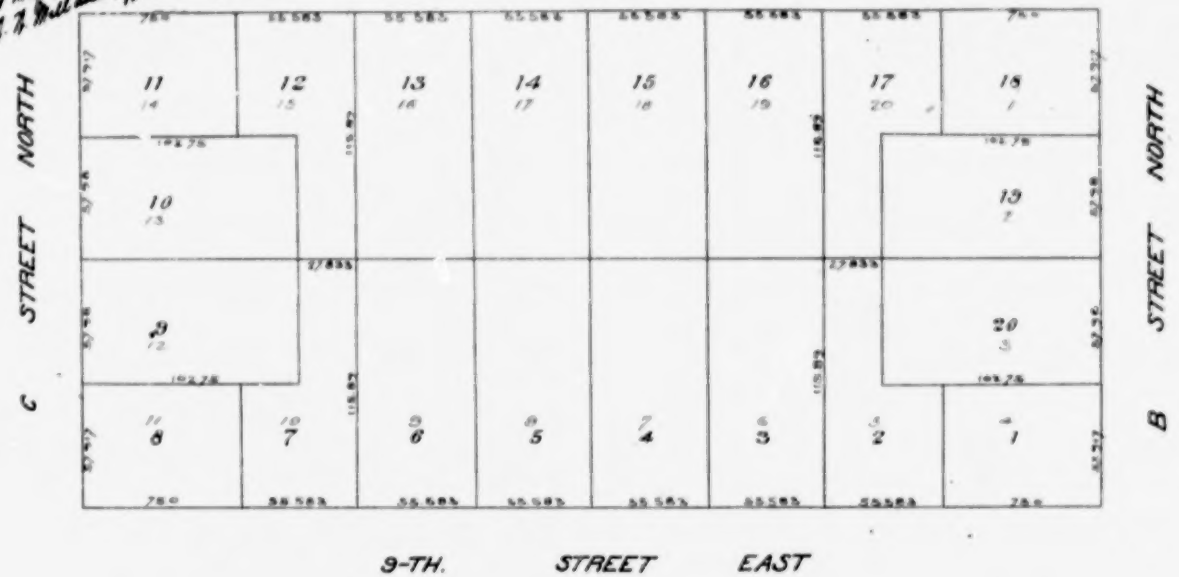
At the request of the Commissioners appointed under the Act of Congress entitled "An Act for establishing the temporary and permanent seat of the government of the United States" the following Square in the City of Washington was recorded the 13th. day of October 1792

Equity No. 22,357
"In Subject N. N. N. N. 16."
Filed May 2, 1902
N. N. Miller Assistant Assistant Assistant

939

J Armstrong No 1313 Rhode Island Ave. } $ 367
J A Ashley et al

10-TH. STREET EAST



9-TH. STREET EAST

The Commissioners and George Walker the originel proprietor of this Square No. nine hundred and thirty nine in the City of Washington, bounded on the North by North C Street, on the East by East 10th. Street, on the South by North B Street, and on the West by East 9th Street, have agreed on the division thereof in manner following to wit, The Lots numbered, one, two, three, ten, eleven, twelve, thirteen, fourteen, fifteen and twenty are to remain to the said George Walker and the lots numbered, four, five, six, seven, eight, nine, sixteen, seventeen, eighteen and nineteen are to be subject to be sold agreeable to the Deeds in Trust concerning the lands in the said City, witness our hands this 13th. day of October 1792.

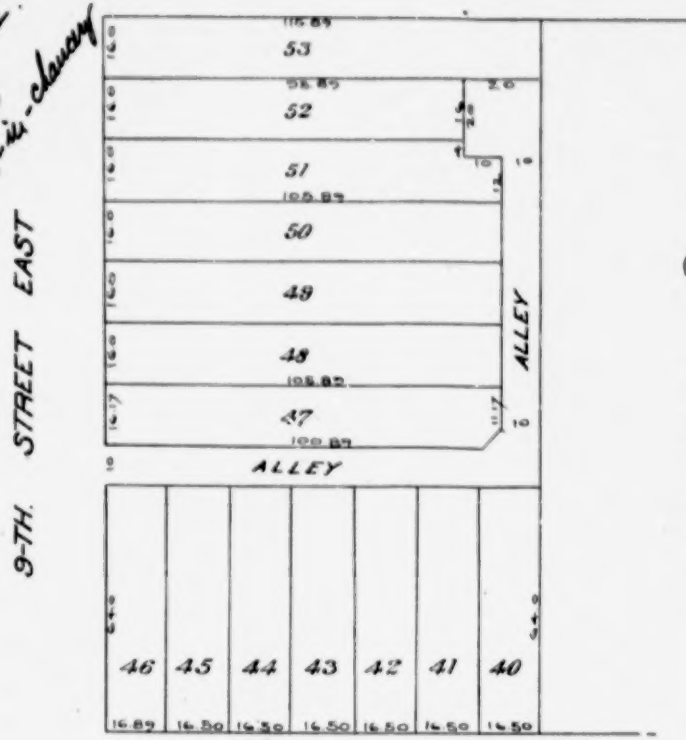
Witness
(signed) T. Briggs } (signed) Dd Stuart } Commissioners
(signed) Danl. Carroll }
(signed) George Walker

I certify that this plat is a true copy of the original record in this office (Lot numbers in red are shown in pencil on original)

(signed) Henry B. Looker
Surveyor D.C. May 7th 1902

939

Equity No. 22-257
Supreme Court D.C. No. 29
Filed May 7-1902
W. F. Wallace
Examiner-in-Chancery



Mr 13/13 J Armstrong Rec'r etc, vs J A Ashley et al } # 3685

Washington D.C. March 12th. 1892.

I hereby subdivide Lots 3. 4. 5 and 6 (of Mary Baldwin et al Book C.H.B. page 41) Square 939 into Lots 40 to 53 and Alley as shown above.

Witness | (signed) Chas. J Young
(signed) Jas. H. Forsyth

(signed) Jno. H. Walker (seal)

I certify that this is a true copy of plat recorded in Book 19. page 47, of the Surveyors Office of the District of Columbia
(signed) Henry B. Looker

Witness

(signed) Jas. H. Forsyth

(signed) Jno. H. Walker (seal)

I certify that this is a true copy of plat recorded in Book 19. page 47, of the Surveyors Office of the District of Columbia

(signed) Henry B. Looker
Surveyor D.C. May 7th. 1902

I certify that the foregoing plat is correct, and agrees with the records of this office. Witness my hand and official seal this March 12th. 1892.

(signed) Wm. Forsyth (seal)
Surveyor District Columbia

"EXHIBIT W. W. M. No. 22."

Filed May 7, 1902.

No. 901 "C" Str. N. E., Washington D. C.

SEPTEMBER 21, 1893.

The New South Building & Loan Ass'n, New Orleans, La.

GENTLEMEN: Referring to yours of the 16th. inst. addressed to your gen'l agent, Mr. Breverd, which letter has been shown to me I have to say, I am ready to accept the loan on the terms as therein named, and desire the payments made as follows:

371 1st. Instalment of $4,000.00 Sept. 30th, 1893.
2nd. " " 3,000.00 Oct. 10th, "
3rd. Instalment of 4,000.00 Nov'r 1st, 1893.
4th. " " 2,000.00 Nov'r 15th, "
5th. " " 7,000.00 Dec'r 10th, "

The abstract of title showing the continuation down to date will be sent you to-morrow.

Very respectfully, &c., AARON BRADSHAW.

372 "EXHIBIT W. M. M. No. 23."

Filed May 7, 1902.

WASH'N, D. C., *Oct.* 27, 1893.

To whom it may concern:

I hereby certify that I have sold to A. Bradshaw about two hundred and fifty thousand building bricks and have received payment therefore except a balance of $71.00 which is still due but for which sum I look to said Bradshaw personally and hereby release any ground or buildings in which said bricks may be used and particularly do I release all claims on sub lots 48, 49, 50, 51, 52 and 53, in square 939, this city from any claim by reason of said balance of $71.00.

JAMES T. CHILDS.

"EXHIBIT W. W. M. No. 24."

Filed May 7, 1902.

Agreement as to Taxes.

For, and as a part of, the consideration offered by me to the New-South Building and Loan Association for the loan of $20000.00 for which I have applied to said association, I agree and bind myself, provided a loan is made to me by said association, in any amount

whatever, to pay each and every tax or assessment of any kind that said association shall be required to pay on account of the amount of money loaned me, whether such tax be imposed by the
373 State, the parish or county, or the municipality or the taxing district, wherein is situated the real estate offered by me as security for the loan aforesaid; and said association having paid any such tax as aforesaid, is authorized to deduct the amount of same from any payment or payments made by me at any time, no matter for what purpose such payments may nominally be made.

AARON BRADSHAW.

Witness my hand and seal, this 28th. day of October, 1893.

LETA M. MORSE,
[SEAL.] *Notary Public, D. C.*

374 "EXHIBIT W. W. M. No. 25."

Filed May 7, 1902.

Whereas, the rules of the New-South Building and Loan Association require that all property given it as security for loans, shall be insured against fire.

Therefore, this agreement witnesseth: That in consideration of the said association making me a loan of $20,000.00 and for and in consideration of $1.00 in hand paid me, I hereby contract and agree that said association shall have the right to secure for me all fire insurance carried on buildings given it as security, from the date of, and during the pendency of, said loan (notwithstanding any insurance that may be in force at the time said loan is made) at a rate of per cent. not exceeding the rates charged on similar property, at the city of Washington, District of Columbia by first-class fire insurance companies, and I further contract and agree to pay said association all premiums due for such fire insurance policies secured by it within thirty days after date of such policies, and I authorize said association to deduct from any amounts remitted by me sufficient to cover any and all premiums paid under this agreement, no matter for what purpose said remittance may be said to be made.

This agreement is supplemental to the insurance contract contained in my note and deed of trust and shall not be construed to conflict with, but shall be taken as a part of such contract.

Witness my hand and seal, this day of October 28th, 1893, in Washington, D. C.

AARON BRADSHAW. [SEAL.]

Witnesses:

WALTER H. ACKER.
JNO. H. WALTER.

375 "EXHIBIT W. W. M. No. 26."

Filed May 7, 1902.

Bid for Loan.

WASHINGTON, D. C., *Oct. 28th*, 1893.

To the New South Building and Loan Association of New Orleans, La.:

I, Aaron Bradshaw the owner and holder of two hundred shares of stock in this association contained in certificate No. 7330 of series 39 on which I desire to obtain an advance of twenty thousand dollars and I offer in consideration of such anticipation in payment thereof a premium of fifty cents per share per month, until said series 39 to which said stock belongs shall have become fully paid up.

AARON BRADSHAW.

Witness:
JNO. H. WALTER.
WALTER H. ACKER.

376 "EXHIBIT W. W. M. No. 27."

Filed May 7, 1902.

Short copy.

Clerk's office, supreme court of the District of Columbia.

AARON BRADSHAW
vs.
JAMES W. PUMPHREY. } No. 25942. At Law.

1893, June 10. Judgment, for def't against pl't'ff & sureties.

Moses Bradshaw & Leonard P. Bradshaw....	$31.00
Costs of suit.....	$21.10
" add'l to satisfy.....	.40

Test:
[SEAL.]

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

1893. Oct. 31.

[Typewritten across the face:] 1893 Dec. 5, Judgment entered satisfied. John R. Young, clerk.

377 "EXHIBIT W. W. M. No. 28."

Filed May 7, 1902.

Whereas, we the subscribers, have furnished the materials and work for erecting six dwelling houses for F. M. Angelo, contractor and Aaron Bradshaw, owner on lot or piece of ground, situate in the city of Washington, in the District of Columbia, and known as to wit: lots 48, 49, 50, 51, 52 & 53 in square numbered nine hundred and thirty-nine (939) and have agreed to release all liens which we, or any or either of us have, or might have, on the said lots and dwellings for work or materials contracted for or furnished in, for or about the erection, construction, improvement or repairing of the same.

Now these presents witnesseth, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us, at or before the sealing and delivery hereof, by the said F. M. Angelo, contractor & Aaron Bradshaw, owner well and truly paid, the receipt whereof we do hereof acknowledge, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said Aaron Bradshaw and to his heirs and assigns, all and all manner of liens, claims, and demands whatsoever, which we, or any or either of us now have, or might or could have, on or against the said dwellings & lots and premises, for work or materials contracted for or furnished in, for or about the erection, construction, improvement or repairing of the said dwellings or otherwise however. So that he, the said Aaron Bradshaw heirs and assigns, shall and may have, hold and enjoy, the said dwellings & lots and premises, freed and discharged
378 from all liens, claims and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the same, if these presents had not been made.

In witness whereof, we have hereunto set our hands and seals, on the date written opposite our respective signatures.

Date.	Witnesses at signing.	
April 12 1894	A. Bradshaw A. J. Neff, tin & stoves.	[L. S.]
April 12 1894	A. Bradshaw D. W. Stockstill Gale S.	[L. S.]
April 21 1894	Virgil G. Williams W. S. Quigley, plasterer.	[L. S.]
April 12 1894	A. Bradshaw C. Sampson, pancher.	[L. S.]
April 12 1894	A. Bradshaw F. M. Angelo, builder.	[L. S.]
April 12 1894	A. Bradshaw Wm. H. Dokert, bricklayer.	[L. S.]
" 13 1874	A. Bradshaw James T. Childs, brick.	[L. S.]
Apr. 13/94	Aaron Bradshaw, Thos. W. Smith, lumber glass millwork.	[L. S.]
Apr. 13/1894	Geo. H. Harrington, Barber & Ross mantels & hardware.	[L. S.]
" " "	A. C. Walter B. Stanley Simmons, arch't.	[L. S.]
April 26	A. Bradshaw Joseph Fanning stone and stonework.	[L. S.]
Apr. 21/94	A. C. Walter M. McIntire excavation.	[L. S.]

Certificate to Obtain Payment.

WASHINGTON, D. C., *April* 26, 1894.

I hereby represent and certify to —— that the signatures signed to the annexed release of liens, comprise a true, full and complete list of all corporations and persons —— who have contracted for or furnished any and all materials fixtures —— for, in or about the erection, construction, repair or improvement of the building-
379 or premises known as No. 215, 217, 219, 221, 223 & 225 9th street N. E., in the city of Washington, in the District of Columbia, to wit: or who are or have been sub-contractors upon said building-, or any part thereof, or for furnishing any and all fixtures or improvements to said real estate under any contract or agreement with the undersigned.

FRANK M. ANGELO, *Contractor.*

Witness:
A. C. WALTER.

380 "EXHIBIT W. W. M. No. 29."

(*Receipts.*)

$420.00/100. WASHINGTON, D. C., *Oct.* 30/93.

Received of A. Bradshaw four hundred and twenty dollars for 60,000 bricks said bricks to be used in the construction of six houses on lots 48 to 53 in square 939 said bricks to be hauled by said A. Bradshaw at his own expense from a lot on D street between 12th and 13th streets S. E.

L. E. CARRUTHERS.

WASHINGTON, D. C., *Oct.* 31, 1893.

Rec'd of A. Bradshaw the sum of $560.00 being in full for 350 loads of sand (a) 1^{60} per load said sand to be delivered and used in certain houses to be erected on lots 48 to 53 sq. 939, this city.

MICHAEL McINTIRE.

WASHINGTON, *Nov.* 1*st*/93.

Received of Aaron Bradshaw six hundred dollars $600. being in full for 30,000 press brick at twenty dollars per thousand said brick to be delivered by me to be used in the construction of six houses on lots 48–53 inclusive in square 939 Washington, D. C.

WM. H. DOHERTY.

381 $282.00. WASHINGTON, D. C., *Nov'r* 23, 1893.

Received of Aaron Bradshaw the sum of two hundred and eighty two dollars, *on* in full for grading lots 48 to 53 sq. 939. ($149.00) concreting foundations ($126.00) digging trenches (7 00) total $282.00.

MICHAEL McINTIRE.

$1875.00. WASHINGTON, D. C., *Nov.* 25", 1893.

A. Bradshaw to James T. Childs, Dr.

To 250 thousand bricks (a) 7.50 per m. $1875.00 and I hereby release lots 48 to 53 sq. 939 inclusive from all claims under the mechanic's lien law for said bricks.

Rec'd payment.

JAMES T. CHILDS.

Witness:
WM. H. DOHERTY.

$150.00. WASHINGTON, D. C., *Nov'r* 25, 1893.

Received of A. Bradshaw the sum of one hundred and fifty dollars, on account of brick laying on houses on lots 48 to 53 sq. 939.

WM. H. DOHERTY.

382 "EXHIBIT W. W. M. No. 30."

Filed May 7, 1902.

Rec'd of Mr. Aaron Bradshaw $250. for services rendered.
W. E. AUGHINBAUGH.

May 23, 1893.

383 Form 501, E. D. 9–11–1902. 1,000. 4094. R. 687.

(Copy.)

"EXHIBIT W. W. M. No. 31."

Filed May 8, 1901.

No. 807.

Permit to Build.

OFFICE OF INSPECTOR OF BUILDINGS,
DISTRICT OF COLUMBIA,
WASHINGTON, *Nov.* 20, 1893.

This is to certify, that Aaron Bradshaw has permission to erect six 3 story brick buildings on lot 48 to 53 square 939 No. 215 to 225, 9th St., N. E., in accordance with application No. 807 on file in this office, and subject to the provisions of the building regulations of the District.

The right is reserved to examine the buildings as often as may be necessary while in course of erection, and order any change in the

construction that may be deemed requisite to insure sufficient strength, solidity and safety from fire.

All flues must be enclosed with brick walls nine inches thick or cased in terra-cotta pipes eight inches inside diameter, enclosed with brick work not less than four and one-half inches thick. Permission is granted to lay a plank roadway across pavement. Deposit has been made to repair pavement and clean roadway.

By order of the Commissioners, D. C.

(Signed) THOS. B. ENTWISLE,
Inspector of Buildings.

Paid $12.00.

I hereby certify this to be a true copy of permit for brick buildings within, named now on file in the office of inspector of buildings.

R. M. EVANS,
Ass't Inspector of Buildings.

384 Form 500, E. D. 8–13–'02. 1000. R. 378.

"EXHIBIT W. W. M. No. 31."

No. 807.

Fill out application in copying ink.

Application for Permit to Build.

WASHINGTON, D. C., *Nov.* 20, 1893.

To the inspector of buildings:

The undersigned owner hereby applies for a permit to build according to the following specifications:

1. State how many buildings to be erected. Six.
2. Material. Brick.
3. What is the owner's name? Aaron Bradshaw.
4. " architect's " ——.
5. " builder's " F. M. Angelo.
6. " location? Lots 48 to 52, square 939.
7. " nearest street? # 215 to 225, 9th St. N. E.
8. " purpose of the building? Dwelling.
9. If a dwelling, for how many families? One each.
10. Is there a store in the lower story? No.
11. Will the building be erected on solid or filled land? Solid.
12. Size of lot: No. of feet front ——; No. of feet rear ——; No. of feet deep ——.
13. Size of main building, No. of feet front 16; No. of feet rear ——; No. of feet deep 34; No. of stories in height 3; No. of feet in height from sidewalk to highest point of roof 35.

14. No. of feet in height from level of sidewalk to highest part of wall ——.

15. No. of feet in height from sidewalk to eaves 35.

16. Size of back building: 4 feet long; —— feet wide; —— feet high; No. of stories ——.

17. Material of foundation. Brick and concrete.

18. Thickness of external walls: Cellar or basement 13; 1st story 13″ & 9″; 2d story 13″ & 9″; 3d story 13″ & 9″; 4th story ——; 5th story ——; 6th story ——; 7th story ——; 8th story ——; 9th story ——. Thickness of party-walls: Cellar or basement 13; 1st story 9″; 2d story 9″; 3d story 9″; 4th story ——; 5th story ——; 6th story ——; 7th story ——; 8th story ——; 9th story ——.

19. What will be the materials of the front? Pressed stone. If of stone what kind? Brown stone.

20. Will the roof be flat, pitch, or mansard? Flat. Material of roofing. Tin.

21. Are there any oriels? Three. Height ——; width ——; projection ——; form ——.

22. What will be the means of access to the roof? Scuttle.

23. Are there any hoistways? ——. How protected? ——.

24. How is the building heated? ——.

25. Are there any bay windows? Three. Height ——; width 9′; projection 4′; form sq.

26. Are there any tower projections? ——; height ——; width ——; projection ——.

27. Are there any show-windows? ——; form ——; projection ——.

28. What will be the projection of steps from building line? 4′.

29. Are there vaults? ——. Dimensions ——.

30. Will there be an area? ——; width ——; how protected ——.

31. Will there be any cellar steps? ——; how protected ——.

32. Is the lower story to be used for business purposes of any kind? ——.

33. What is the estimated cost of the improvement? $24000.

34. Have deposited $75.00 as required by order of Commissioners.

35. Is there a sidewalk or improved roadway? ——.

36. Collector's receipt, No. 880, date November 18/93.

(Signed) Signature, AARON BRADSHAW.

Address: 901 C St. N. E.

I hereby certify this to be a true copy of *application* now on file in the office of inspector of buildings for brick buildings within named.

R. M. EVANS,
Ass't Inspector of Buildings.

385 "EXHIBIT W. W. M. No. 32."

Filed May 8, 1902.

Know all men by these presents, that we John T. Arms and Samuel A. Drury, trustees under that certain deed of trust from Lydia Hoagland, widow bearing date on the 14th day of September, A. D. 1892, and recorded in Liber No. 1726, folio No. 303, *et seq.*, of the land records of the District of Columbia, for and in consideration of the sum of one dollar, current money of the United States, to us in hand paid by said Lydia Hoagland at and before the sealing and delivery of these presents, receipt of which is hereby acknowledged, have released, remised, and conveyed, and do hereby release, remise, quit-claim, and convey unto said Lydia Hoagland, her heirs and assigns, the following described real estate, situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises, known and distinguished as and being lots numbered 48, 49, 50, 51, 52 and 53 in John H. Walter's subdivision of lots in square 939, as per plat recorded in Liber 19 folio 47, of the records of the office of the surveyor of the District of Columbia.

To have and to hold the same, with the appurtenances, unto and to the use of the said Lydia Hoagland, her heirs and assigns, forever, fully released and discharged from the effect and operations of said deed of trust a part of the indebtedness secured thereunder having been paid and the notes secured on said lots 48, 49, 50, 51, 52 and 53, under said deed of trust exhibited to us duly cancelled and by the signature hereto of the holder of said notes consenting to this release.

386 Witness our hands and seals this 30th. day of September, A. D. 1893.

JOHN T. ARMS, *Trustee.* [SEAL.]
SAMUEL A. DRURY, *Trustee.* [SEAL.]
JNO. H. WALTER, *Holder of Notes.*

Signed, sealed and delivered in the presence of—
EMMA M. GILLETT.

DISTRICT OF COLUMBIA, *ss:*

I, Emma M. Gillett, a notary public in and for the District aforesaid, do hereby certify that John T. Arms and Samuel A. Drury, trustees, parties to a certain deed, bearing date on the 30th day of September, A. D. 1893, and hereto annexed, personally appeared before me, in the District aforesaid, the said John T. Arms and Samuel A. Drury being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this thirtieth day of September, A. D. 1893.

EMMA M. GILLETT,
Notary Public.

[SEAL.]

Endorsed: 12.39 p. m. Received for record on the 30 day of October, A. D. 1893, and recorded in Liber No. 1860, folio 319 *et seq.*, one of the land records of the District of Columbia, and examined by—B. K. Bruce, recorder.

387 "EXHIBIT W. W. M. No. 33."

Filed May 8, 1902.

This indenture, made this fourteenth (14") day of September in the year of our Lord one thousand eight hundred and ninety-two by and between Lydia Hoagland, widow, of the State of New York, party of the first part, and Leta M. Morse of the District of Columbia, party of the second part:

Witnesseth, that the said party of the first part for and in consideration of the sum of ten ($10.) dollars, current money of the United States, to her in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, has granted, bargained and sold, aliened, conveyed and confirmed, and by these presents does grant, bargain and sell, alien, enfeoff, convey and confirm unto and to the use of the said party of the second part, her heirs and assigns all those certain pieces or parcels of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as and being lots numbered forty (40) forty-one (41), forty-two (42), forty-eight (48) forty-nine (49) fifty (50) fifty-one (51) fifty-two (52) and fifty-three (53) in square numbered nine hundred and thirty-nine (939) as subdivided by John H. Walter and recorded in Book 19 page 47 in the surveyor's office of the District of Columbia together with the rights, easements, privileges and appurtenances to the same belonging or in anywise thereto appertaining.

To have and to hold the said land and premises, with the
388 appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said party of the second part, her heirs and assigns.

In testimony whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

LYDIA HOAGLAND. [SEAL.]

Signed, sealed and delivered in presence of—

GEO. G. COLEGATE.

DISTRICT OF COLUMBIA, *To wit:*

I, Geo. G. Colegate, a notary public, in and for the said District do hereby certify that Lydia Hoagland party to a certain deed, bearing date on the fourteenth (14th) day of September, A. D. 1892, and hereto annexed, personally appeared before me, in said Dis-
389 trict the said Lydia Hoagland being personally well known to me to be the person who executed the said deed and acknowledged the same to be her act and deed.

Given under my hand and official seal this fifteenth day of September, A. D. 1892.

GEO. G. COLEGATE,
[SEAL.] *Notary Public, D. C.*

Endorsed: Received for record on the 30 day of October, A. D. 1893, at 12.40 o'clock p. m., and recorded in Liber No. 1860 at folio 321 *et seq.*, one of the land records for the District of Columbia, and examined by B. K. Bruce, recorder.

390 "EXHIBIT W. W. M. No. 34."

Filed May 8, 1902.

This indenture, made this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and ninety-three, by and between Leta M. Morse, unmarried of the city of Washington, District of Columbia party of the first part and Aaron Bradshaw, of the same place, party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of the sum of ten ($10.00) dollars, lawful money, to her in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged has given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and does by these presents, give, grant, bargain and sell, alien, enfeoff, release, convey, and confirm unto the party of the second part, his heirs and assigns forever, the following described land and premises, situate, lying and being in the city of Washington, District of Columbia, and distinguished as and being lots numbered forty-eight (48), forty-nine (49) fifty (50) fifty-one (51) and fifty-two (52) and fifty-three (53) in square numbered nine hundred and thirty-nine (939) as subdivided by John H. Walter and recorded in Book 19 page 47 in the surveyor's office of District of Columbia together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the party of the first part, of, in, to or out of the said
391 land and premises:

To have and to hold, the said land and premises and ap-

purtenances unto and to the only use of the party of the second part his heirs and assigns forever.

And the said party of the first part for herself, her heirs, executors and administrators, does hereby covenant and agree to and with the party of the second part, his heirs and assigns, that she the party of the first part, and her heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under and through said party of the first part or her heirs.

And further, that the party of the first part and her heirs shall and will, at any and all times hereafter, upon the request and at the cost of the party of the second part his heirs and assigns, make and execute all such other deed or deeds, or other assurances in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part his heirs or assigns, or his or their counsel, learned in the law, shall advise, devise or require.

In testimony whereof, the parties of the first part has hereunto set *his* hand and seal on the day and year first hereinbefore written.

LETA M. MORSE. [SEAL.]

Signed, sealed and delivered in presence of—

G. W. BALLOCH.

392 DISTRICT OF COLUMBIA, *To wit:*

I, G. W. Balloch, a notary public in and for the said District do hereby certify that Leta M. Morse unmarried party to a certain deed bearing date on the twenty-eighth day of October, A. D. 1893, and hereto annexed personally appeared before me in said District, the said Leta M. Morse being personally well known to me as the person who executed the said deed and acknowledged the same to be her act and deed;

Given under my hand and official seal, this twenty-eighth day of October, A. D. 1893.

G. W. BALLOCH,
Notary Public.

[SEAL.]

Endorsed: Received for record on the 30" day of October, A. D. 1893 at 12.41 p. m., and recorded in Liber No. 1860, at folio 423 *et seq.*, one of the land records for the District of Columbia, and examined by B. K. Bruce, recorder.

393 "EXHIBIT W. W. M. No. 35."

Filed May 12, 1902.
" Oct. 23, 1902.

Index to Ejectment Suits from March 24, 1863, to December 7, 1892.

The foregoing are the only ejectment suits from March 24, 1863 to December 7, 1892 appearing on the records of this court relating to square No. 939.

Square.	Description.	Number.
* * *	* * * *	
939 Lot 1.....	.....	..... 32039.
939 Lot 1.....	.....	..... 32181. 32182. 32183.
939 Original lot 18.....	.....	..... 32620.

The foregoing are the only ejectment suits from December 7, 1892 to May 10, 1902, appearing on the records of this court relating to square No. 939.

939	Lots 1. 2. 3. Prout's subdivision.....	39040.
"	" 1. 2. 3.	39063.
"	" 1. 2. 3.	39064.

394 *Motion for Plaintiff to Amend Declaration.*

Filed March 6, 1893.

In the Supreme Court of the District of Columbia.

JAMES A. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32039, Doc. 36.

Now comes the plaintiff, by his attorneys, and moves the court for leave to amend his declaration in this cause by adding thereto a claim for the recovery of the possession of undivided two-fifths (2/5) parts of each of certain other pieces or parcels of land situate in the city of Washington, District of Columbia, and known as original lots numbered twenty (20), two (2) and three (3), in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lots numbered three (3), five (5) and six (6), in said square numbered nine hundred and thirty-nine (939), according to the subdivision of said

square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of Columbia.

J. H. LICHLITER,
Attorney for Plaintiff.

395 *Motion to Consolidate.*

Filed April 21, 1897.

In the Supreme Court of the District of Columbia.

JAMES A. ASHLEY
vs.
AARON BRADSHAW. } No. 32039. At Law.

Now comes the plaintiff in the above-entitled cause and moves the court that the same may be consolidated with the case of N. B. Ashley *vs.* Aaron Bradshaw, at law, No. 32,181, pending in this honorable court upon the ground that said causes relate to precisely the same subject matter, being ejectment suits for undivided interests in the same lots of ground, and depending upon the same questions of law and fact.

J. J. DARLINGTON,
A. S. WORTHINGTON,
Attorney- for Plaintiff.

Please take notice that the foregoing motion will be presented to circuit court No. 2 Mr. Justice McComas presiding, on Friday, the 23rd day of April, A. D. 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, for its action.

J. J. DARLINGTON,
A. S. WORTHINGTON,
Attorney- for Plaintiff.

396 Supreme Court of the District of Columbia.

FRIDAY, *May 10th*, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

JAMES A. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } No. 32039. At Law.

Upon hearing the defendant's motion for a new trial herein, it is considered that the same be, and it is hereby overruled, and judgment on verdict ordered: Therefore it is considered, that the plaintiff James A. Ashley, recover of Aaron Bradshaw, defendant, possession of an undivided two fifths (⅖) part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one (1), two (2) and three (3) in square nine hundred and thirty-nine (939) in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four (4) five (5), and six (6), in said square according to a so-called subdivision thereof recorded in Liber "C. H. B." at folio 41, of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth (¼) part of that certain other piece or parcel of ground in said square, sometimes designated and described as lot twenty (20), and sometimes designated and described and known as lot three (3) in accordance with the said so-called subdivision—the
397 piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square, and having a frontage of one hundred and fifteen feet (115) ten and three fourths inches (10¾), on north B street, by a depth of 186 feet, 2 inches, fronting on east Ninth street; and one cent damages together with his costs of this suit to be taxed by the clerk, and have execution thereof.

398 Supreme Court of the District of Columbia.

No.	Parties.	Action.	Plaintiff's attorney-.	Costs.
32,039	James A. Ashley *vs.* Aaron Bradshaw.	Ejectment Lot 1, sq. 939 & $1000.00	J. J. Darlington. R. D. Mussey. J. H. Lichliter. Ellen S. Mussey. Defendant's attorney. John Ridout.	Attorney..... .. Marshal..... .. Clerk..... ... .. Witnesses..... .. Depositions... ..

Date.	Proceedings.	Clerk's costs.	
1891, Sept. 10	Deposit toward costs, $10. by Mussey, order &c. decl. & notice to plead—filed ...	.90	10.
" " "	Summons (2) & copy of issued.....	2 25	
" " "	Copy of order &c. decl. & notice to plead served...	25	
" Oct. 6	Appearance of Ridout for def't. Plea "not guilty" &c. filed	65	
" " 7	Joinder and note of issue calendared.....	90	
1893, M'ch 6	Appearance of Lichliter for pl't'ff filed.....	40	
" " 6	Motion for leave to amend declaration filed....	25	
" " "	Leave to pl't'ff to amend decl. granted—M. 27 p. 396.	30	
" " 11	Amended decl. filed	25	
" Apr. 24	Plea to amended decl. filed	25	
" Sept. 12	Joinder in issue filed	25	
" Oct. 18	Appearance of Mussey for pl't'ff	40	
	Issuing spas. & entering returns (See Witness Book, p. 26)	1 60 50	
1896, Apr. 15	Motion for leave to file amended decl. filed.....	25	
" May 2	" " " " " " " granted (33-264).....	30	
" Oct. 26	Second amended decl. & notice filed..... ..	50	
" " 31	" " " plea of "not guilty" to filed.....	25	
1897, Apr. 21	Motion to consolidate with No. 32,181, and notice filed.....	50	
" May 8	Joinder in issue on plea to amended decl. filed	25	
" June 24	Motion to consolidate with 32,182, notice & affidavit	75	
" Oct. 30	Motion to consolidate with 32,182 granted (M. 36, p. 184).....	30	*2 25
1901, Apr. 17	*Spa. ad. test.* issued to pl't'ffs, 5 witnesses & ret's "summoned" all.....	90	90
" " 22	Add'l deposit $2.75 paid by pl't'ff, jury sworn and respited (M. 42, p. 17)	60	
" " 23	Verdict for possession of property claimed and one cent damages. (M. 42 p. 19)..	60	2 75
" " 24	Motion for new trial filed & entered (M. 42 p. 21)..	85	
" May 10	" " " " overruled and judgment on verdict for possession and 1 cent damages, besides costs (M. 42 p. 40).....	3 90	
" June 6	Clerk's add'l costs $3.20 paid by pl't'ff's att'y.....	.....	3 20
		19 10	19 10

*G. Apr. 22, '01.

399 *Declaration in Ejectment, &c.*

Filed October 13, 1891.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY
vs.
AARON BRADSHAW. } No. 32181. At Law. Doc. 6 35.

1. The plaintiff sues the defendant to recover possession of an undivided one-fifth part of a certain piece or parcel of land situate in the city of Washington, District of Columbia, and known as original lot one in square numbered nine hundred and thirty-nine (939) according to the plan or plat of said city, and otherwise known and designated as lot numbered four in said square 939, according to the subdivision of said square recorded in Liber C. H. B. at folio 41, of the records of the surveyor's office for the District of Columbia, said lot being bounded as follows, namely: Beginning for the same at the southwest corner of said square, and running thence east, fifty-seven feet and eleven inches along the line of B street north; thence seventy-five feet north; thence, fifty-seven feet and eleven inches west; and thence south, seventy-five feet, to the place of beginning, of which described part of said lot and premises the plaintiff was heretofore, to wit, on the 27th day of March, A. D. 1891, lawfully possessed, when the defendant who is now in actual occupation of the said part of said lot and premises, entered the same and thereupon unlawfully ejected the plaintiff, and *and* thence forward unjustly detained, and still detains, the same from the plaintiff.

400 And the plaintiff claims possession of the said described part of the said lot and premises and appurtenances as tenant in fee simple, together with the costs of this suit.

2. The plaintiff further sues the defendant for that the defendant heretofore, to wit, on the 27th day of March, A. D. 1891, unlawfully entered upon a certain piece or parcel of land situate in the city of Washington, District of Columbia, and known as original lot one, in square numbered nine hundred and thirty-nine (939) according to the plan or plat of said city, and otherwise known and designated as lot numbered four in said square 939, according to the subdivision of said square recorded in Liber C. H. B., at folio 41 of the records of the surveyor's office for the District of Columbia, said lot being bounded as follows, namely beginning for the same at the southwest corner of said square, and running thence east fifty-seven feet and eleven inches along the line of B. street north; thence seventy-five feet north; thence, fifty-seven feet and eleven inches west; and thence, south, seventy-five feet to the place of beginning, and ejected the plaintiff therefrom, and has continued to keep the plaintiff ejected and expelled from the said described lot and premises of which the plaintiff was and is the tenant in fee simple of an undi-

vided one-fifth interest, amd has received the rents, issues and profits thereof, to-wit, of the value of five hundred dollars, whereby the plaintiff has lost said rentts, issues and profits of great value, to wit, of the value of five hundred dollars; and the plaintiff sues to recover said rents, issues and proffits and costs of suit.

J. J. DARLINGTON &
R. D. MUSSEY,
Attorneys for Plaintiff.

401 The defendant is to plead hereto on or before the first day of the first special term of the court, occurring twenty days after service hereof, otherwise judgment.

J. J. DARLINGTON &
R. D. MUSSEY,
Attorneys for Plaintiff.

Motion for Complainant to Amend Declaration.

Filed March 6, 1893.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant,
} At Law. No. 32181, Doc. 36.

Now comes the plaintiff, by his attorneys, and moves the court for leave to amend his declaration in this cause by adding thereto a claim for the recovery of the possession of an undivided one-fifth ($\frac{1}{5}$) part of each of certain other pieces or parcels of land situate in the city of Washington, District of Columbia, and known as original lots numbered twenty (20), two (2) and three (3), in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lots numbered three (3), five (5) and six (6), in said square numbered nine hundred and thirty-nine (939) according to the sub-division of said square recorded in Liber C. H. B., at folio 41, of the records
402 of the surveyor's office for the District of Columbia.

J. H. LICHLITER,
Attorney for Plaintiff.

Judgment.

Supreme Court of the District of Columbia.

THURSDAY, *October* 14, 1897.

The court resumes its session pursuant to adjournment, Mr. Justice McComas, presiding.

* * * * * * *

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

This cause coming on to be heard without argument, it is by the court ordered, that the motion for a new trial of this cause be and hereby is, overruled; therefore it is considered that the plaintiff recover against said defendant, possession of an undivided one-fifth part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one, two and three, in square nine hundred and thirty-nine, in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four, five and six, in said square, according to a so-called subdivision thereof, recorded in Liber "C. H. B." at folio forty-one of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth part of that certain other
403 piece or parcel of ground in said square sometimes designated and described as lot 20 and sometimes designated, described and known as lot three in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square, and having a frontage of one hundred and fifteen feet, ten and three fourths inches on north "B" street, by a depth of one hundred and eighty-six feet two inches, fronting on east Ninth street; and one cent damages, together with his costs of suit to be taxed by the clerk, and have execution thereof.

Mandate.

Filed February 26, 1901.

UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting: [SEAL.]

Whereas, lately in the supreme court of the District of Columbia, before you or some of you, in a cause between Nehemiah B. Ashley,

plaintiff, and Aaron Bradshaw, defendant, law, No. 32,181 wherein the judgment of the said supreme court entered in said cause on the 14th day of October, A. D. 1897, is in the following words, viz:

"This cause coming on to be heard without argument, it is by the court ordered, that the motion for a new trial of this
404 cause be, and hereby is, overruled; therefore it is considered that the plaintiff recover against said defendant possession of an undivided one-fifth part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one, two and three, in square nine hundred and thirty-nine, in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four, five and six, in said square, according to a so-called subdivision, recorded in Liber "C. H. B." at folio 41, of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth part of that certain other piece or parcel of ground in said square sometimes designated and described as lot twenty and sometimes designated, described and known as lot three, in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square and having a frontage of 115 feet 10¾ inches on north "B"—by a depth of one hundred and eighty-six feet two inches, fronting on east 9th street, and one cent damages, together with the costs of suit, to be taxed by the clerk, and have execution thereof."

as by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

405 And whereas, in the term of April, in the year of our Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs; and that the said plaintiff, recover against the said defendant, Aaron Bradshaw, for his costs herein expended and have execution therefor.

April 13, 1899.

And whereas, said cause was removed to the Supreme Court of the United States by virtue of a writ of error sued out by the said Aaron Bradshaw, agreeably to the act of Congress in such case made and provided:

And whereas, at the October term, A. D. 1900, of said Supreme Court of the United States, the death of Nehemiah B. Ashley the defendant in error, having been suggested, it was ordered that Mary M. Ashley, widow, and Hayden H. Ashley, Ralph B. Ashley and

Emma B. Jenkins, heirs of Nehemiah B. Ashley, deceased, be made parties defendants in error in this cause;

And whereas, at the October term, A. D. 1900 of the said Supreme Court of the United States the following judgment was entered, viz:

"It is now here ordered and adjudged by this court that
406 the judgment of the said Court of Appeals in this cause be, and the same is hereby, affirmed with costs; and that the said Mary M. Ashley, widow, *et al.*, heirs of Nehemiah B. Ashley, deceased, recover against the said Aaron Bradshaw, — for their costs herein expended and have execution therefore.

January 14", 1901."

as by the inspection of the mandate of said Supreme Court of the United States fully and at large appears.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 26th day of February, in the year of our Lord, one thousand nine hundred and one.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Plaintiff.

Clerk..... $
Printing record..... $

407 Supreme Court of the District of Columbia.

No.	Parties.	Action.	Plaintiff's attorney-.	Costs.	
32,181	Nehemiah B. Ashley *vs.* Aaron Bradshaw.	Ejectment lot 1, sq. 939.	J. J. Darlington. R. D. Mussey. J. H. Lichliter. Ellen S. Mussey. Defendan'ts attorney. John Ridout.	Attorney.. Marshal... Clerk .... Witnesses. Wit. fees.. Clerk	20 10 50 47 80 91 25 $169 55 2 20 $171 75

Date.			Proceedings.	Clerk's costs.	
1891,	Oct.	13	Deposit toward costs, $10, by Mussey—order, &c., decl. & notice to plead—filed	90	10
"	"	"	Summons (2) & copy of decl. & notice to plead issued	2 25	
"	"	"	Summons & copy of decl. & notice to plead served	25	
"	Nov.	3	Appearance of Ridout for def't. Pleas "not guilty" & never indebted filed	65	
1893,	M'ch	6	Appearance of Lichliter for pl't'ff filed	40	
"	"	"	Motion for leave to amend decl. "	25	
"	"	"	Leave to pl't'ff " " " granted (M. 27, p. 395) filed	30	
"	"	11	*Amended* to amend decl. filed	25	
"	Apr.	24	Pleas to amended decl. "	25	
"	Sept.	12	Joinder & note of issue—filed—calendared filed	90	
"	Oct.	18	Appearance of Mussey for pl't'ff	40	
1896,	Apr.	15	Motion for leave to file amended declaration filed	25	
"	May	2	" " " " " " granted (M. 33 p. 264)	25	
"	Oct.	26	Second amended decl. & notice filed	50	
"	"	31	" " " Plea of not guilty filed	25	
1897,	May	8	Joinder in issue on plea to amended decl. "	25	
"	"	26	Jury sworn & respited (M. 36 p. 88)	60	
"	"	27	Jury respited from day to day until & incl. June 16—11 days (M. 36, pp. —)	3 30	
"	June	17	Verdict for pl't'ff for possession & 1c. damages (M. 36 p. —) (Wit. Book p. 84, under 32,178).	60	
1897,	"	19	Motion for new trial filed & entered (M. 36, p. 106)	85	
	Aug.	12	" " " " continued until Oct. term and order prolonging Apr. term 30 days from Oct. 4/97 to settle exceptions (M. 36 p. 131)	60	
"	Oct.	13	Motion of application to settle exceptions filed	25	
"	"	14	Motion for new trial overruled and judgment on verdict for pl't'ff for possession and one cent damages and costs (M. 36 p. 172)	3 90	
"	"	18	Appeal by defendant—order for filed	25	
"	"	"	Citation—writ of & 1 copy issued	2	
"	"	20	" " " " ret'd, "service accepted" J. J. Darlington for pl't'ff issued	25	
"	"	29	Appeal bond for $1000—with Jesse L. Heiskell surety filed	25	
"	"	"	Appeal bond fixed at $1000 (M. 36 p. 183)	30	
"	"	30	Bill of exceptions submitted (" " " 184)	25	
"	Nov.	3	" " " signed, sealed &c. (M. 36 p. 187)	85	
"	Dec.	3	Time to file transcript of record extended to Feb. 8/97 (M. 36 p. 210)	30	
"	Nov.	3	Bill of exceptions—filed	25	
			Issuing 10 s'p'as for pl'ff, 20 writs & return 19 summoned	6 00	
			Issuing 5 s'p'as for def'ts, 31 writs & return 30 summoned 1 n. f.	5 10	
1901,	Feb.	26	Mandate of Court of Appeals—affirming judg't filed	25	
"	Apr.	24	Suggestion of death of pl't'ff and motion to substitute parties filed	25	
"	"	25	Order substituting Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, and Emma B. Jenkins—as plaintiffs (M. 42 p. 24)	60	
"	"	"	Certificate of attendance of pl't'ff's witnesses (add'l) filed (19 days)	25	
			Short copy ($1.85 clerk's costs—paid by pl'ff's att'y)	50	1 85

Date.			Proceedings.	Clerk's costs.	
1901, May		9	Appearance of Worthington for pl'tiff as add'l counsel and.....	40	
			Notice of motion for writ of possession filed.	25	
"	"	10	Writ of possession ordered to issue (M. 42 p. 40)...	30	
"	"	"	" " " issued and ret'd	1 25	38 15
"	June	29	Clerk's add'l costs $38.15 paid by pl'tiff's att'y.		

408 *Motion for Leave to Amend Declaration.*

Filed March 6, 1893.

In the Supreme Court of the District of Columbia.

MARY A. BRECKINRIDGE, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32182, Doc. 36.

Now comes the plaintiff, by her attorneys, and moves the court for leave to amend her declaration in this cause by adding thereto a claim for the recovery of the possession of an undivided one-fifth (1/5) part of each of certain other pieces or parcels of land situate in the city of Washington, District of Columbia, and known as original lots numbered twenty (20) two (2) and three (3), in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lots numbered three (3), five (5) and six (6) in said square numbered nine hundred and thirty-nine (939), according to the sub-division of said square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of Columbia.

J. H. LICHLITER,
Attorneys for Plaintiff

409 *Motion to Consolidate.*

Filed April 21, 1897.

In the Supreme Court of the District of Columbia.

M. A. BRECKINRIDGE
vs.
A. BRADSHAW. } No. 32182. At Law.

Now comes the plaintiff in the above-entitled cause and moves the court that the same may be consolidated with the case of N. B. Ashley *vs.* Aaron Bradshaw, at law No. 32,181, pending in this honorable court upon the ground that the said causes relate to precisely

the same subject matter, being ejectment suits for undivided interests in the same lots of ground, and depending upon the same questions of law and fact.

J. J. DARLINGTON,
A. S. WORTHINGTON,
Attorneys for Plaintiff.

Please take notice that the foregoing motion will be presented to circuit court No. 2 Mr. Justice McComas presiding, on Friday, the 23rd day of April, A. D. 1897, at 10 o'clock a. m., or so soon thereafter as counsel can be heard, for its action.

J. J. DARLINGTON
A. S. WORTHINGTON,
Attorneys for Plaintiff.

410 Supreme Court of the District of Columbia.

FRIDAY, *May* 3, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

MARY A. BRECKINRIDGE, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } No. 32182. At Law.

Upon hearing the defendant's motion for a new trial herein, it is ordered that the same be, and it is hereby overruled, and judgment on verdict ordered: therefore, it is considered that the plaintiff recover of the defendant possession of an undivided one-fifth (1/5) part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots (1), two (2) and three (3) in square nine hundred and thirty-nine (939) in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four (4) five (5) and six (6), in said square according to a so-called subdivision thereof recorded in Liber "C. H. B." at folio 41 of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth (1/4) part of that certain other piece or parcel of ground in said square, sometimes designated and described as lot twenty (20), and sometimes designated, described and known as lot three (3) in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of
411 said square and having a frontage of 115 feet, 10¾ inches, on North B street, by a depth of 186 feet 2 inches, fronting on east Ninth street; and one cent damages as aforesaid assessed together with her costs of this suit to be taxed by the clerk and have execution thereof.

412 **Supreme Court of the District of Columbia.**

No.	Parties.	Action.	Plaintiff's attorney.	Costs.
32,182	Mary A. Breckenridge vs. Aaron Bradshaw.	Ejectment Lot 1, sq. 939.	J. J. Darlington. R. D. Mussey. J. H. Lichliter. Ellen S. Mussey. Defendant's attorney. John Ridout.	Attorney..... .. Marshal..... .. Clerk..... .. Witnesses..... .. Depositions... ..

Date.	Proceedings.	Clerk's costs.	
1891, Oct. 13	Deposit toward costs, $10. by Mussey, order &c. decl. & notice to plead—filed	90	10
" " "	Summons (2) & copy of decl. & notice to plead—issued	2 25	
" " "	Summons (2) & copy of decl. & notice to plead—served	25	
" Nov. 3	Appearance of Ridout for def't. 2 pleas filed	65	
1893, M'ch 6	" " Lichliter for pl't'ff filed	40	
" " "	Motion for leave to amend decl. "	25	
" " "	Leave to pl't'ff to amend decl. granted—M. 27 p. 395.	30	
" " "	Amended decl. filed	25	
" Ap'l 24	Pleas to amended decl. filed	25	
" Sept. 12	Joinder & note of issue filed—calendared	90	
" Oct. 18	Appearance of Mussey for pl't'ff	40	
1896, Apr. 15	Motion for leave to file amended decl. filed	25	
" May 2	" " " " " " " granted (M. 33 p. 264).	30	
" Oct. 26	Second amended decl. & notice filed	50	
" " 31	" " plea of "not guilty," to filed	25	
1897, Apr. 21	Motion to consolidate with 32,181 & notice filed	50	
" May 8	Joinder in issue on plea to amended decl. filed	25	
" Oct. 30	This case is consolidated with #32,039-39040-39063 & 39064 for trial (M. 36 p. 184)	30	
1901, Apr. 22	Add'l deposit toward costs $5. by pl't'ff's att'y, Mr. Darlington		52
" " "	Affidavit (2) & exhibit for continuance filed jurat.	1 00	
" " "	*Spa. ad. test.* issued to pl't'ffs 1 wit. & returned "summoned"	50	
" " 23	*Spa. ad. test.* issued to pl't'ffs 1 wit. & returned "summoned"	50	
1901, Apr. 22	Jury sworn and respited (M. 42 p. 17)	60	
" " 23	Verdict for pl't'ff for possession & 1 cent damages (M. 42 p. 19)	60	
" " 24	Motion for new trial filed & entered (M. 42 p. 21)	85	3 20
" May 5	" " " " overruled and judgment on verdict for pl't'ff for possession & one cent damages & costs (M. 42 p. 32)	3 90	1 80
" June 6	Clerk's add'l costs $2.10 paid by pl't'ff's att'y		2 10
		17 10	17 10

413 *Judgment.*

Supreme Court of the District of Columbia.

FRIDAY, *May 3d*, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

H. FRANK BEARDSLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } No. 39040. At Law.

Upon hearing the defendant's motion for a new trial herein, it is ordered that the same be and it is hereby overruled, and judgment on verdict ordered: Therefore, it is considered that the plaintiff recover of defendant possession of an undivided one-fifth ($\frac{1}{5}$) part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one (1), two (2) and (3), in square nine hundred and thirty-nine (939), in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four (4), five (5) and six (6) in said square according to a so called subdivision thereof recorded in Liber "C. H. B." at folio 41, of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth ($\frac{1}{4}$) part of that certain other piece or parcel of ground in said square, sometimes designated and described as lot twenty (20), and sometimes designated, described and known as lot three (3) in accordance with the said so-
414 called subdivision—the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square, and having a frontage of 115 feet, 10¾ inches, on north "B" street, by a depth of 186 feet, 2 inches, fronting on east Ninth street, and one cent damages, as aforesaid assessed together with his costs of this suit to be taxed by the clerk, and have execution thereof.

415 Supreme Court of the District of Columbia.

No.	Parties.	Action.	Plaintiff's attorney-.	Costs.
39040	H. Frank Beardsley *vs.* Aaron Bradshaw	Ejectment	A. S. Worthington J. J. Darlington Defendant's attorney. John Ridout.	Attorney Marshal Clerk Witnesses Depositions

Date.	Proceedings.	Clerk's costs.	
1895, Dec. 9	Deposit toward costs, $19, by Darlington, order &c. decl. notice filed	90	10
" " "	Summons (2) & copy of decl. &c. issued	2 25	
" " 10	" " " " served	25	
1896, Jan. 6	Appearance of Ridout for def't & pleas (2) filed	65	
" " 9	Joinder & note of issue, filed—calendared	90	
1897, Ap'l 21	Motion to consolidate with 32,181 & notice filed	50	
" June 24	" " " 32,182 notice & aff't filed	75	
" Oct. 30	" " " " granted (M. 36 p. 184)	30	
1901, Apr. 22	Jury sworn and respited (M. 42 p. 17)	60	
" " 23	Verdict for pl't'ff for possession & 1 cent damages (M. 42 p. 19)	60	
" " 24	Motion for new trial filed & entered (M. 42 p. 21)	85	
" May 3	" " " overruled and judgment on verdict for pl't'ff for possession, one cent damages & costs (M. 42 p. 33)	3 90	
" June 6	Clerk's add'l costs $2.45 paid by pl't'ff's att'y		2 45
		12 45	12 45

416 *Judgment.*

Supreme Court of the District of Columbia.

THURSDAY, *May 2d*, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

H. FRANK BEARDSLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 39063. At Law.

The time within which to file motion for a new trial herein, judgment on verdict is ordered: Therefore, it is considered that the plaintiff take nothing by this suit, that the defendant go thereof without day and recover against the plaintiff his costs of suit to be taxed by the clerk, and have execution thereof.

417 Supreme Court of the District of Columbia.

No.	Parties.	Action.	Plaintiff's attorney.	Costs.
39063	H. Frank Beardsley *vs.* Aaron Bradshaw	Ejectment	J. J. Darlington. Defendant's attorney. John Ridout.	Attorney .. Marshal .. Clerk .. Witnesses .. Depositions ..

Date.	Proceedings.	Clerk's costs.	
1895, Dec. 14	Deposit toward costs, $10. by Darlington, order &c. decl. & notice—filed	90	10
" "	Summons (2) & copy of decl. &c., issued	2 25	
" " 16	" " " " served	25	
1896, Jan. 18	Appearance of Ridout for def't & plea "Not guilty" filed	65	
" Oct. 27	Joinder & notice of issue—filed calendared	90	
1897, Apr. 21	Motion to consolidate with 32181 & notice, filed	50	
" June 24	" " " " 32182, notice & aff't filed	75	
" Oct. 30	" " " " " granted (M. 36 p. 184)	30	
1901, Apr. 22	Jury sworn and respited (M. 42 p. 17)	60	
" " 23	Verdict for defendant (M. 42 p. 18)	60	
" May 2	Judgment on verdict for def't *vs.* pl't'ff for costs (M. 42 p. 31)	3 90	
" June 29	Clerk's add'l costs, $1.60 due; $— paid by N. E. W. (collected Jan. 15, 1902)		1 60
		11 60	11 60

418 Supreme Court of the District of Columbia.

No.	Parties.	Action.	Plaintiff's attorney.	Costs.
39064	John S. Breckenridge *vs.* Aaron Bradshaw.	Ejectment.	J. J. Darlington. Defendant's attorney. John Ridout.	Attorney .. Marshal .. Clerk .. Witnesses .. Depositions ..

Date.	Proceedings.	Clerk's costs.	
1895, Dec. 14	Deposit toward costs, $10. by Darlington, order &c. decl. & notice filed	90	10
" " "	Summons (2) & copy of decl. &c. issued	2 25	
" " 16	" " " " " served	25	
1896, Jan. 18	Appearance of Ridout for def't & plea "not guilty" filed.	65	
" Oct. 27	Joinder & note of issue, filed calendared.	90	
1897, Apr. 21	Motion to consolidate with 32181, & notice filed	50	
" June 24	" " " " 32182, notice & aff't filed	75	
" Oct. 30	" " " " " granted (M. 36 p. 184).	30	
1898, July 1	Ordered on stet. cal. (M. 38 p. 73)	30	
1901, Apr. 1	Order of stet. vacated & case restored to calendar for tria (M. 41 p. 241)	30	
" " 18	Appearance of Worthington for pl't'ff, suggestion of death of pl't'ff, & motion to substitute Mary A. Breckenridge, & exemplified copy of proceedings of probate of will of deceased pl't'ff filed	1 15	
" " 22	Notice of hearing on above motion filed.	25	
" " "	Jury sworn & respited (M. 42 p. 17)	60	
" " 23	Juror withdrawn, leave to amend decl. & case cont'd (M. 42 p. 18)	60	
		9 70	
1902, Jan. 7	Case stricken from calendar (M. 41 p. 454)	30	
		10 00	

419 "EXHIBIT W. W. M. No. 36."

Filed May 12, 1902.

UNITED STATES OF AMERICA:

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the records of this office show that James A. Ashley, was originally appointed as an employee of this office, October 7, 1867, appointed first assistant examiner May 1, 1877, and resigned May 31, 1883.

The records further show that J. A. Ashley 38 C. St. N. E., Washington, D. C. was registered August 13, 1897, as an attorney authorized to practice before this office, and his name still appears on the roster.

No register of attorneys was kept by this office prior to 1897.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washing-

[SEAL.] ton, this 12th day of May, in the year of our Lord one thousand nine hundred and two and of the Independence of the United States of America, the one hundred and twenty-sixth.

F. I. ALLEN,
Commissioner of Patents.

420 "EXHIBIT W. W. M. No. 37."

Filed May 12, 1902.

Real Estate and Court Record.

* * * * * * *

WASHINGTON, D. C., TUESDAY, *October* 31, 1893.

* * * * * * *

Recorded October 30.

Deeds.

* * * * * * *

Sq. 939—Hoagland, Lydia to Lita M. Morse $10, sub-lots 40, 41, 42 and 48 to 53 inclusive.

* * * * * * *

Sq. 939—Morse—Lita M. to Aaron Bradshaw $10. sub-lots 48 to 53 inc.

* * * * * * *

Deeds of Trust.

* * * * * * *

Sq. 939—Bradshaw, Aaron, *et ux.* to J. H. Kennard and Johnston Armstrong trustees to secure the New South Building and Loan Ass'n. Bond $40,000. Sub-lots 48 to 53 inclusive.

* * * * * * *

Releases.

Sq. 939—Hoagland, Lydia from J. T. Arms and S. A. Drury, trustees, Liber 1726, folio 303. Sub-lots 48 to 53 inclusive."

421 **Equity. No. 22257.**

"EXHIBIT W. W. M. No. 38."

Filed May 12, 1902. W. W. Millan, Examiner-in-chancery.

No. 12318. Supreme Court of the District of Columbia.

Parties.	Action.	Complainants' solicitor.	Costs.
Ashley Nehemiah B.—James A. Beardsley Sarah E. Breckenridge Mary A *vs.* Walter John H. Bradshaw Aaron Ridout John Lowndes James Taylor J. Augustus.	.....	R. D. Mussey Defendants' solicitor. John Ridout James Lowndes(*p.p.*) Shellabarger & Wilson for 1 & 2. No. 3 *pro se.* John Ridout for #5 James Lowndes *p. p.*	Clerk..... .... Marshal..... .... Examiner..... .... Depositions (—).. .... Auditor..... .... Printer..... .... Witnesses..... .... Solicitor..... .... Deposit by R. D. Mussey..... $10.00

Date.	Proceedings.	Clerk's fees.
1890, Mar. 1	Bill & Exhibit A. Affidavit. Order to file. Appearance filed.....	80
" " "	Injunction—undertaking—filed ..	25
" " "	" temporary—returnable Mar. 5, '90. ordered, M. 30 p. — & issued.....	40
" " "	And spa. to ans. issued (5 copies).....	6 00
" " "	" " " " ret'd served & summoned all, Mar. 1, '90.....	50
" " 13	Amended & supplemental bill & exhibits (5) B. C. D. E. F. filed—Jurat	1 75
" Ap'l 1	Appearance of def't No. 3—*p. p.* ordered. O. B. 11 p. 131.....	40
" " "	Appearance of def't No. 4—*p. p.* ordered. O. B. 11 p. 130.....	40
" " 24	Stipulation as to amended & supplemental bill—filed....	25
" May 16	Answers (separate) of def'ts Nos. 1 & 2 filed & app. of Shellabarger & Wilson.....	90
" " "	Answers copies of ordered & issued to R. D. Mussey....	4 80
" " 22	" of def't No. 3 filed—jurat & appearance *pro se*..	65
" " "	" " No. 5 " " & appearance of John Ridout.....	65
" " 29	" " No. 4 " " & appearance *p. p.*...	65
" " 31	" " Nos. 3 and 4 issued to R. D. Mussey...	80
" June 7	Exceptions to answers of defendant—Walter—filed.....	25
" " "	" " " Bradshaw "	25
" " "	Replication to answer of def't Ridout.....	25
" " "	" " " Taylor.....	25
" " 21	Calendared for July 1890 "sp'l term." O. B. 11 p. 149..	40
" Sept. 24	Discharging temporary inj'n—Motion to dissolve and affidavit.....	50
" Oct. 3	Discharging temporary inj'n—granted (M. 31, p. 348)..	40
" " "	Exceptions to answer overruled—(M. 31 p. 347).....	40

Date.	Proceedings.	Clerk's fees.
1890, Aug. 29	Restraining order—petition for—Jurat	50
" " "	" " granted—O. B. 12 p. 119 and copy	80
" " "	" " undertaking for—filed	25
" " "	Spa. to ans. petition—issued & copy	2 00
" Sept. 1	" returned—served—James A. Ashley Aug. 29–1891	25
" " "	Rest'g order returned—served—James A. Ashley Aug. 29–1891	25
" " 2	Copy petition of Aug. 29–'91. issued to J. J. Darlington	80
" " 10	Answer of Jas. W. Ashley (& aff't of W. W. Dodge) to petition of Walter & Bradshaw, filed	50
" " "	Restraining order disch'g'd & injunction denied—M. 33 p. 194	40
" " 14	Dismissal of bill as to def'ts Nos. 1 and 2 for failure	00
" " "	" " to file replication—motion for	25
" " 17	" " refused—M. 33 p. 215	55
" Oct. 6	Time to plead extended till Oct. 17–1891—M. 33 p. 279.	40
" " 22	Dismissal of bill for want of replication—motion for—filed	25
" " 29	Suggestion of death of compl't Sarah E. Beardsley—filed	25
" " 30	Bill of revivor—motion to limit time to file—filed.	25
" Nov. "	" " time to file limited to Feb. term—M. 33 p. 417	40
1892, Feb'y 2	" " stipulation as to—filed	25
" " "	Replication—filed	25
" April 11	Dismissal of cause for failure to prosecute—motion for	25
1893, Jan. 28	Testimony ordered—taken in 70 days. M. 36 p. 117	40
" M'ch 1	Dismissal for want of prosecution—motion for—filed	25
" July 1	" of bill for want of prosecution—ordered. M. 37 p. 152	55

A true copy.

Test:

[SEAL.] J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

422 "EXHIBIT W. W. M. No. 39."

Filed May 19, 1902.

Filed Mar. 1, 1890. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, the 1st Day of March, 1890. In Equity.

NEHEMIAH B. ASHLEY, SARAH E. BEARDSLEY, Mary A. Breckenridge & James A. Ashley, Plaintiffs,
between
JOHN H. WALTER, AARON BRADSHAW, JOHN Ridout, James Lawndes, & J. Augustus Taylor, Defendants.
} Equity. No. 12318, Docket 30.

Bill for Injunction, to Quiet Title, &c.

To the justices of the supreme court of the District of Columbia:

The plaintiffs state as follows:

The plaintiffs, Nehemiah B. Ashley, Sarah E. Beardsley, Mary A. Breckenridge and James A. Ashley, are citizens of the United States, resident in Scranton, Pennsylvania, Montrose, Pennsylvania; Brooklyn, New York and the city of Washington, D. C. respectively; and bring this suit in their own right as hereinafter set forth.

The defendants John H. Walter, and Aaron Bradshaw,
423 are believed to be citizens of the United States, resident in the District of Columbia and are sued in their own right; the defendants John Ridout and James Lowndes are citizens of the United States resident in the District of Columbia and are sued as trustees as hereinafter set forth; and the defendant J. Augustus Taylor is believed to be a citizen of the United States resident in the District of Columbia and is sued as the alleged beneficiary under a certain deed of trust as hereinafter set forth.

2. The plaintiffs are the owners in fee as tenants-in-common, of sundry lots in the city of Washington, District of Columbia, known and designated as lots numbered three (3) four (4), five (5) six (6) seven (7) eight (8) and nine (9) in square numbered nine hundred and thirty-nine (939) according to the sub-division of said square recorded in Liber C. H. B. folio 41—of the records of the surveyor's office of said city and District, said sub-division having been recorded May 7th, 1869.

3. Their respective interest in said lots is as follows viz: the said James A. Ashley, two (2), undivided fifth parts (2/5) and the other plaintiffs one (1) undivided fifth part (1/5) respectively; derived as follows, viz:

On or about August 18th 1872 Joseph R. Ashley purchased said lots numbered four (4) to nine (9) inclusive of and from Christopher

Ingle (trustee) and Mary Baldwin as by reference to the duly recorded deed therefor in Liber #696 fol. 13 of the land records of this District will more fully appear; and thereafter viz: on or about March 22, 1875 the said Joseph R. Ashley died intestate as to this property leaving as his heirs-at-law the above named plaintiffs and one George K. Ashley who subsequently sold and transferred,
424 by a deed duly recorded in Liber 843, fol. 299 of the land records of this District, to which reference is hereby made, his interest in said property to the plaintiff James A. Ashley:

On or about October 28th, 1881, the plaintiffs bought of and from Morris Downs and wife the aforesaid lot numbered three (3) as by reference to the record of the conveyance thereof in Liber 988, fol. 170, of the land records of this District will more fully appear, and they hold the same in the proportional interest above set forth.

4. The plaintiffs and their grantors have held the aforesaid lots numbered four (4) to nine (9) inclusive by open, notorious, continued and unchallenged possession since the year 1896 (except as hereinafter set forth): and the plaintiffs and their grantors have held the aforesaid lot numbered three (3) by open, notorious, continued and unchallenged possession since the year 1868 (except as hereinafter set forth), having record title thereto, paying taxes and exercising general acts of proprietorship in respect thereof.

5. The defendant Walter on or about December 11th 1889 placed upon record a deed purporting to have been made November 20th, 1889 by the heirs of one George Walker *i. e.* heirs of Helen Reddock, *et al.*, deceased and to convey to him (*inter alia*) *original* lots numbered one (1), two (2), three (3) and twenty (20) in said square numbered nine hundred and thirty-nine (939) which said lots are the same as those numbered four (4), five (5), six (6) and three (3) respectively on the aforesaid sub-division, as by reference to the record thereof in Liber 1438 folio 470 of the land records of this District will more fully appear.

425 And on December 11th, 1889 the said defendant Walter recorded a deed of trust whereby he conveyed unto the defendants Ridout and Lowndes (*inter alia*) the aforesaid lots to secure an alleged indebtedness to the defendant J. Augustus Taylor of $100,000. evidenced by a note dated December 9, 1889 and payable on or before five (5) years from date without interest.

6. As before stated the plaintiffs and their grantors had been in peaceable, open and notorious possession of these lots for over twenty (20) years prior to the recording of these deeds and the plaintiffs are advised that, even if there had been any invalidity or defect in the original vesting of title to these lots in those from whom they claim, this continued, adverse possession had sufficed to give them a perfect title thereto.

7. The plaintiffs charge, on information and belief, that the defendants Walter and Bradshaw had actual notice, and knowledge by reputation and common report of their title in and to said lots—as they certainly had the constructive and legal notice thereof, given by the public records, at and before the recording of the aforesaid

deed from the heirs of Helen Reddock, and the happening, &c., of the various matters hereinafter set forth.

8. And they charge that the said defendant Walter, either singly or in combination and confederacy with the said defendant Bradshaw or others to your plaintiffs unknown, procured the aforesaid deed from the heirs of Helen Redock and placed the same on record for the purpose of throwing a cloud upon the title of your
426 plaintiffs to said lots, and upon the titles of others to other lots therein named.

And they further charge that the said deed of trust from the said Walter to the said Ridout and Lowndes was made in furtherance of this purpose, and to further cloud said titles.

And they further charge that the said deed of trust was, and is, a mere blind and not made on and for a *bona fide* indebtedness—but as a means to enable the said Walter and his confederates the more effectually to carry out a design of obtaining money from your plaintiffs and others, in the nature of peace—or hush money for removing apparent claims (which they know to be unfounded) upon property to which they know they have no valid title.

And upon information and belief they aver that the said Walter has said (in substance) that he had no expectation of getting possession of the property embraced in the said Reddock—heirs deed, but that he could use it to get money when persons owning said property attempted to sell it.

9. Some ten days or so since, the said Bradshaw having failed in an overture from the said Walter to get your plaintiff, James A. Ashley (who represents also the interest of his fellow plaintiffs herein, as well, as himself) to enter into negotiations with the said Walter, proceeded to put a fence around the said lots numbered one (1) two (2) and three (3) which fence was thereafter removed—but not by him, the said Bradshaw.

427 Thereupon on or about February 25th, 1890, the said Walter and Bradshaw made an application for a building permit to the inspector of buildings of the District for the erection of a brick shanty on said lot numbered four (4)—see copy thereof filed herewith and marked *Exhibit A* and upon obtaining the permit they at once erected a "house" or shanty on said lot in great haste, and employing a large (for such an undertaking) force and having on the place and standing about numerous spectators or "guards" and have kept watchmen on the premises since to prevent the approach of any but their own force or sympathizers and abettors.

10. Your plaintiffs charge that according to the tax records of the District the defendant Bradshaw has no property, *real* or *personal* nor has the defendant J. Augustus Taylor; while the entire holdings of the defendant Walter amount to about $9000.00—but how much of this is encumbered and for what amounts your plaintiffs are not aware.

11. Your plaintiffs in view of the attempts already made to annoy them in their possession of their property by the said Walter and Bradshaw are apprehensive of yet further interference with a tres-

pass upon their property by the said defendants; and that it is their purpose to place some irresponsible tenant in the brick shanty they have erected so that your plaintiffs cannot abate the nuisance which, they are advised, has been created by this structure without tending to create a breach of the peace.

428 12. By reason of this danger; and because of the irresponsibility pecuniarily of the defendants Walter, Bradshaw and Taylor; and to prevent a multiplicity of suits; to prevent a continuing trespass; and to remove a cloud on their title and for other reasons they are advised that they have a right to apply to this court of equity for its interposition—by injunction to restrain future and further trespasses on their property and to have the offending structure removed, at the cost of the defendants; and for damages occasioned by their tortious acts; and to have the clouds on their title attempted to be made by the defendants removed.

Prayers.

Wherefore they pray as follows:

1. That the parties named defendant herein be made defendants, and by process duly served, summoned to appear, abide, answer &c.

2. That the defendants make full answer under oath to the several paragraphs of this bill and to the interrogatories hereto annexed.

3. That they and each of them, their agents and employees, be enjoined and restrained, as well pending this suit as finally, from asserting any act of ownership over the aforesaid lots numbered three (3) to nine (9) inclusive according to the said sub-division of square numbered nine hundred and thirty-nine (939) as recorded in Liber C. H. B. folio 41 of the records of the surveyor's office of the

429 city of Washington,—whether by further work on said "house;" by leasing the same; or further erection of houses, fences or the like on said lots; or by alienating said lots; or in any other way whatsoever.

4. That the defendants Walter and Bradshaw remove at their cost, the "house" by them erected on said lot numbered four (4) and restore the ground to its proper condition etc.; and that they pay the damages, to be assessed as the court shall direct, of their entry upon the plaintiffs' said land, and the tortious acts by them thereon committed.

That, on due proceedings had the said deeds from the heirs of Helen Reddock *et al.* and John H. Walter, and from John H. Walter to John Ridout *et al.* be brought into court and declared invalid as respects the said lots of the plaintiffs, and voided, and cancelled on the record.

6. For such further and other relief as the premises considered may be deemed meet and just.

R. D. MUSSEY,
Solicitor and by *Counsel.*

The defendants to this bill are:
John H. Walter
Aaron Bradshaw
John Ridout
James Lowndes
J. Augustus Taylor.

Verification.

James A. Ashley being duly sworn, says:

430 I am one of the plaintiffs named in the annexed and preceding bill which I have carefully read over and the attorney-in-fact of my co-plaintiffs; and the several matters and things therein stated averred and charged are true, according to my best knowledge, information and belief.

J. A. ASHLEY.

Subscribed and sworn to before me this 1st day of March, 1890.

R. J. MEIGS, *Clerk.*
L. P. WILLIAMS, *Ass't Clerk.*

Interrogatories.

To be addressed to the several defendants, and to be by them answered under *oath.*

1. What consideration was paid by John H. Walter to the heirs of Helen Reddock for their conveyance to him? How much in cash? How much in definite or contingent obligations; and what were the terms of such obligations? State fully the arrangement and bargain made with them.

2. How much money did J. Augustus Taylor pay to John H. Walter, as the basis of the note set up in the deed of trust from Walter to Ridout? Where is that note now? Did any money pass from Taylor or any one representing him to Walter, for that note? What was the *real* consideration of that note?

3. Who besides Walter and Taylor are interested in and under the negotiations shown in the Reddock heirs' deed to Walter
430*a* and the deed of trust to Ridout and Lowndes? And in what proportions and to what extent?

4. State fully all the details of such interest and undertaking.

R. D. MUSSEY,
Solicitor and of Counsel for Plaintiffs.

EXHIBIT "A."

Application for Permit to Build.

(Brick and stone.)

WASHINGTON, D. C., *February* 25, 1890.

To the inspector of buildings:

The undersigned hereby applies for a permit to build according to the following specifications:

1. State how many buildings to be erected. One.
2. Material. Brick.
3. What is the owner's name? J. H. Walter.
4. What is the architect's name? ——
5. What is the owner's name? Aaron Bradshaw.
6. " " " location? Lot four, square 939.
7. " " " nearest street? No. 900 B street north-east.
8. " " " purpose of the building? Dwelling.
9. If a dwelling, for how many families? One.
10. Is there a store in lower story? No.
11. Will the building be erected on solid or filled land? Solid.
12. Size of lot, number of feet front: — number of feet 430*b* rear, —; number of feet deep —,?
13. Size of building, number of feet front; twelve; number of feet rear ——; number of feet deep; 28′; number of stories in height 1; number of feet in height from side-walk to highest point of roof; 12′.
14. Number of feet in height from level of side-walk to highest part of wall, 12′.
15. Number of feet in height from side-walk to eaves 12′.
16. Size of back building, ——; feet long ——; feet wide ——; feet high; number of stories ——; style of roof ——.
17. Material of foundation. Brick.
18. Thickness of external walls; cellar or basement, 13″; 1st story 9″; 2d story ——; 3d story ——; 4th story ——; 5th story ——; thickness of party walls; cellar or basement, 13″, 1st story; 9″; 2d story ——; 3d story ——; 4th story ——; 5th story ——;
Are the party walls solid or vaulted? Solid.
19. What will be the materials of front? Red brick.
If of stone, what kind ——.
20. Will the roof be flat, pitched or mansard? Flat.
Material of roofing. Tin.
21. What will be the materials of cornice? Brick. Ornamental projections.
22. What will be the means of access to roof? Skuttle.

53. What is the estimated cost of the proposed improvement? $200.

JOHN H. WALTER,
Per WILLIAMS.

Address 613 F street, N. W.

[SEAL.]

A true copy.
Test:
J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

431 "EXHIBIT W. W. M. No. 40."

Filed June 13, 1902.

Bill of Exceptions.

Filed Nov. 3, 1897. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

Defendant's case and bill of exceptions.

Be it remembered, that at the time of the trial of this case before the Honorable Louis E. McComas, presiding justice, and a jury regularly empannelled and sworn to try the issues joined between the plaintiff and the defendant herein, the plaintiff and defendant gave to the court and jury the following testimony and none other, as follows, to wit:

* * * * * * *

HENRY F. BEARDSLEY, a witness on behalf of the plaintiff, testified as follows:

* * * * * * *

JAMES AYRES ASHLEY, a witness on behalf of the plaintiff, testified that the last witness, Henry F. Beardsley, married witness's youngest sister Sarah Eliza Ashley; that witness's father was Rollin T. Ashley, and that his mother's name was Roxanna Blackman.

* * * * * * *

432 (By PLAINTIFF'S COUNSEL:)

Q. "Mr. Ashley, what lots, if any, did your brother take possession of after this conveyance to him of Ingle and Mrs. Baldwin?"

To this question defendant's counsel objected on the ground that the deed is the best evidence. The court overruled the objection,

and counsel for defendant took an exception, which was duly noted on the minutes of the court before the jury retired.

Witness resuming: They were certain lots on Ninth street beginning at the southwest corner of the square and running northward on that street. At that time there was a fence running east and west and along the northern border of the purchase which he said he had made. That fence, to the best of my recollection extended back the depth of the lot. It was a post and rail fence. On the two northerly lots of which my brother took possession there were habitations—cheap structures—occupied by tenants from whom my brother collected rents to his death, and I collected rents afterwards. The northernmost of these two houses was occupied by Margaret Walker first, and by Thomas Johnson afterwards. Then there was a double cabin near the line between lots 8 and 9, which I think was astride the line, and that was occupied by Anthony A. Henry and others, and the most southerly one was occupied by Dennis Harrison; that was a more pretentious house—the largest of the three. I collected rents of those tenants as late as May, 1889, I think. My brother died in March, and I went out there first in April following. I went out with him some times when he collected rents, and saw money paid to him. As to other acts of ownership exercised over this ground after my brother bought from
433 Mrs. Baldwin and others—he collected some small sums of money some times for sod. Harrison also made an allowance for the use of the lot south of his where he pastured some cows. The sod was taken from the lots not occupied by the cabins, those extending from No. 8 down to Ninth and B streets. We sold the sod to a man named Briscoe. The right of pasturage which he gave Harrison for a consideration covered all the sod from No. 8 down to B street—the same lots from which we sold the sod. The right of pasturage was given to Harrison up to the time the sods were sold, which was in 1886. As to how early we gave him that right, I cannot fix that date exactly. Harrison had the right of pasturage for several years prior to 1886. He pastured his cattle mainly out on the commons, and morning and evening he would allow the cattle to graze on these lots; I have seen them there. On account of something that I had heard I went out to these lots on the 28th of March 1889, as I recollect it; I found some posts and some wires enclosing a portion of the lot which my brother had purchased—all the portion below the north line of lot 6 I think—I mean the sublots as they have been recognized since 1869—the pencil numbers. The wire fence included also lot 3, which was not part of my brother's original purchase, and which he did not purchase at all. We gradually demolished that fence; that was February 21, 1890. Mr. Bradshaw was there and protested against it. I saw Bradshaw again in August, 1891. At that interview, I, as part owner, and as representing the other owners, demanded possession of him of that ground which was enclosed. He replied that his only connection with it was as lessee of Mr. Walter—that he held by a duly executed lease.

Then I told him that it was as lessee and as the representa-
434 tive of Mr. Walter that we demanded possession, I and my associates, and he replied, "Of necessity I refuse." I am referring to all the lots that were enclosed—3, 4, 5, and 6. He had possession of all four of them.

After I broke down that fence the property remained unenclosed a few days. Three or four days afterwards there was a small structure erected on the corner, a brick structure; I think there was no enclosure then; there was an enclosure made afterwards, but I can't determine just when.

The cabins that I have spoken of when I first saw them, had the appearance of having been there some years.

Cross-examination:

Myself and others did enclose with a fence the three northernmost lots just north of this disputed ground.

435 "EXHIBIT W. W. M. No. 41."

Filed June 13, 1902.

Law Docket 36.

31600–32599.

Ejectments.

31,641	⅛ part sq. 53.		
31,657	28 & K Georgetown		
31,658	County Ridge road		
31,691	Lot 3, sq. 701.		
31,776	" G " 436 (Bradley's sub.)		
31,803	Sub. lot 3 sq. 358.		
31,827	County		
31,895	Part lots	5 & 6	sq. 268
31,919	"	4 & 5	" 332
31,936	"	23	" 172
31,937	"	22 & 23	" 172
32,039	"	1	" 939
32,073	Part		" 913
32,074	Lot 3. sq. 755 & ½		sq. 783
32,078	Part		" 913
32,079	"		" 913
32,080	"		" 913
32,081	"		" 913
32,082	"		" 913
32,083	"		" 913
32,127	Part lots 11–12–13 sq. 1042		
32,128	" " 14–15–16–17–18–19 sq. 1042		
32,144	" " 23–		540
32,153	" C		247

436

32,181	Part lots 1	939
32,182	" 1	939
32,183	" 1	939
32,186	" 4	122
32,296	(" 1	604
	(" 5 & 6	605.

437 *Testimony on Behalf of Defendants.*

Filed June 11, 1902.

In the Supreme Court of the District of Columbia.

WASHINGTON, D. C., *May* 27, 1902,
Tuesday, at 2 o'clock p. m.

Met, pursuant to notice, at the office of J. J. Darlington, Esquire, No. 410 Fifth street, N. W., to take testimony on the part of the defendants.

Present: Mr. J. J. Darlington, for the defendants. Mr. George H. Lamar for the complainant.

Whereupon ALFRED G. BUHRMAN.

Direct examination.

By Mr. DARLINGTON:

Q. State your name in full? A. Alfred G. Burnham.

Q. What is your occupation, and how long have you been so occupied? A. I am assistant clerk of the supreme court of the District of Columbia; I have been assistant clerk since October, 1894. I went into the office as superintendent of the file room the first of April, 1890.

Q. Have you produced what are known as the indexes to ejectment suits which are kept in the clerk's office? A. Yes, sir.

438 Q. Can you refer us to any act of Congress or rule of court which provides for these books?

Mr. LAMAR: I object to the question because it is incompetent and immaterial.

A. No sir.

Q. How many books are there? A. Two, as far as I know.

Q. Please look at the first one and tell me when and by whom it was prepared?

Mr. LAMAR: I object to the question because reference to the books themselves is the best evidence as to the period covered thereby.

A. I prepared this book on a type-writer, from data furnished me by Mr. Young, the clerk of the court——

Mr. LAMAR: Let it be understood that my objection applies all the way through.

Mr. DARLINGTON: It is so agreed.

WITNESS (continuing): —prior to this date. This date was put on the day I made this caption sheet, which was after the completion of the book itself.

Q. What date was that? A. January, 1893; I didn't put the day, because I didn't think it was necessary.

Q. When was that book first put on the shelves of the clerk's office for use? A. After I had prepared the matter on the type-writer. I might say that a great deal of these references—these long descriptions of property—I filled in myself from the cases; Mr. Young gave me the numbers of the cases and I went to the papers
439 and got the description from the declarations, and then the book, after I had gotten it in shape, was sent to the binder and bound. It was back to the office in a very short period.

Q. Can you tell us approximately when that book was available for use by attorneys and others? A. I should say in January, 1893.

Q. Prior to that time, what book, if any, of a similar character was in the clerk's office? A. None that I know of; I never saw any.

Q. Now, please tell us when the book No. 2 of these indexes was begun and became available for public use? A. My information on that is a little indefinite. It bears the date of December 7th, 1892, and I should say that was the beginning of it. There is no other reference as to the date, on it. It covers the period commencing with docket thirty-eight, the preceding book covering all the dockets up to and including thirty-seven.

Q. Book, one, if I understand you, including the first thirty seven dockets, was made at one time? A. Yes, sir.

Mr. LAMAR: Objected to as leading.

Q. How was book two made? A. As the suits were filed. The matter was put in this book the same as we indexed judgments at law and other matters, at that time.

Cross-examination.

By Mr. LAMAR:

Q. You see in this first volume, the entry "docket No. 1 to docket No. 37, both inclusive, March 24, 1863, to December 7, 1892," can you state when the compilation of this book was commenced. A. You mean the beginning of the data?
440 Q. Yes. A. No, I can't; as I said before the data was furnished me by Mr. Young.

Q. Then he compiled the data? A. Yes, most of it; and these books—that and this one—were gotten out merely for the use of the clerk—the benefit of the clerk.

Mr LAMAR: I object to the latter part of the answer as not responsive to the question.

Q. Did you know of the compilation by Mr. Young prior to the time it was turned over to you? A. I can't say as to that.

Q. Do you know what he did with it while he was compiling it—where it was kept? A. I only know it was in manuscript form; I don't know where he kept it, whether it was in his desk or whether he took it home or whether he kept it in his pocket.

Q. You simply know of the type-writing of this first volume? A. I only know that I type-wrote it; I followed his manuscript. In many instances I filled in the description if the description was imperfect.

Q. Can you state the time he turned over this manuscript to you? A. I know it was prior to the day there (indicating book)—sometime prior to doing the work.

Q. Did you devote all your time to this or did you do it at odd times? A. I did it at odd times; he didn't furnish me the complete manuscript all at one time; at odd times he would come down and say "Here is some more data to add to this book you are getting up."

Q. Can you state the time at which the entries on page thirty-seven, relating to ejectment suits affecting property in square
441 939, were made by you in this compilation? A. Well, I can say this: it was made by me sometime between April 1st, 1890, and January, 1893; that is as near as I can get at it.

Q. Then the volume marked "Index to ejectment suits from docket 38, to docket —, December 7, 1892 to —," was commenced, if I understand you correctly, December 7, 1892 or at the time the first suit was filed, which was noted in docket 38? A. I should say so, yes—from my knowledge of the book.

Q. Then, from December 7, 1892, the property involved in new ejectment suits, has been noted in this second volume—it has been the custom to note them in this second volume? A. Yes, sir.

Q. And should the clerk, at any time, overlook the matter of making such notation, would it have been done upon counsel calling the clerk's attention to such omission? A. I can't say; I might have done so, but I can't speak for the others—I never had any call like that, though.

Q. The effort has been to make these books a correct index of ejectment suits pending? A. Yes, sir.

Q. Are they not consulted as such by counsel, from time to time? A. Well, I don't know about that; I have seen attorneys looking at them.

Q. You have seen representatives of title companies looking at them? A. Yes, sir.

Q. They are kept near the mechanic's lien dockets and other books used by counsel? A. They are kept on the counter in the law side of the office.

442 Q. How near to the docket of mechanic's liens? A. Sometimes on top; sometimes underneath; sometimes at the side; sometimes at the other end of the counter.

Q. But the regular place for keeping them? A. They have no regular place; anywhere on that counter is the proper place for them, or anywhere in that room.

Q. Where are they generally found when they are put up? A. Sometimes at one end of the counter; sometimes at the other, in the pigeon-holes. We have pigeon-holes at each end of the counter there for small books.

Q. Isn't it a fact that they are usually on the right-hand side, as you face the desk, where the mechanic's lien books are kept? A. I cannot say.

Q. Where did you find them when you brought them here over? A. I found them in there; but I have seen them on the other end as often as I have seen them on the right side; they travel from one end of the desk to the other.

Q. That is true also of the mechanic's lien docket? A. Yes, and the ejectment dockets and the other dockets.

Redirect examination.

By Mr. DARLINGTON:

Q. Mr. Buhrman, you say the effort has been to make these books a correct index of ejectment suits—please tell us for whose purpose or for what purpose? A. For our own purpose—not the public at large, but for the information of the clerk and his assistants.

Q. Has your office, to your knowledge, ever given notice to attorneys, that you desired them to keep track of these books and call your attention to it, if you had overlooked any ejectment suits?

Mr. LAMAR: Objected to as leading and suggestive.

443 A. No sir; one of the reasons for the adoption of these books was that we have frequent inquiries from strangers about old cases, ejectment cases and others, and we got them up in order that we might find ejectment cases without much search and since we got them up, we of course allow anybody who comes in to use them—attorneys or anybody else.

Mr. LAMAR: I object to the answer as not responsive to the question and further because the witness has not been shown competent to testify as to the purpose in the mind of the clerk in the preparation of these books.

Recross-examination.

By Mr. LAMAR:

Q. Mr. Buhrman, you say that these books were prepared, not so much for the public at large, as for your own purposes—as a matter of fact, who was the originator of the plan for preparing these books? A. Mr. Young.

Q. Do you undertake to say that you knew what the purpose in his mind, in the preparation of these books, compiled before you

were consulted about them? A. In my consultation with him, in the preparation of this one——

Mr. LAMAR (interposing): I object to any hearsay.

WITNESS (continuing): I gathered it from his conversation.

Mr. LAMAR: That is hearsay; I ask that the answer to the preceding question be stricken out as hearsay.

Q. In the use to which these books are put, is there any difference, so far as the public's access to them is concerned, between them and the judgment record and the mechanic's lien dockets and other books of that kind? A. No.

Q. You say that it would have been difficult without the
444 use of the books, to find pending ejectment suits—as a matter of fact, is there any other means, whereby a party can ascertain what pieces of land are involved in an ejectment suit, without knowing the names of the parties interested—without some such general index as this? A. No; I do not know about that; I presume not; unless he had some other data which would assist him upon it.

Q. Then this is the only index of pending suits—the only numerical index of pending ejectment suits? A. Index No. 1 is covered by the ejectment cases—these dockets which are embraced in Index No. 1, are indexed under the letter "E" of each docket—the regular law dockets.

Q. I understand you to say that was a numerical index? A. So far as I know from the dockets—I gather that along at that time, under the letter "E" of each docket, when an ejectment suit was filed, the clerk would turn to the docket and enter under the letter "E," the lot and the number of the case. Then, upon inquiry made about property and ejectment suits, not knowiag the date, we would have to run all these dockets from one to thirty-seven, till we found the case, and that led to getting up this index—getting all the matter into one book.

Q. If I understand you then, in the various law dockets, under the letter "E," for ejectments, it has been the custom to state the lot and square involved, in giving ejectment suits—in all the ejectment suits contained within that particular volume—now is this compilation—does this give simply the land that is involved in the ejectment suits as shown in the original declarations or would it contain all lands involved in amendments?

WITNESS: You mean the old form?

445 Mr. LAMAR: Yes.

A. I couldn't answer that; I didn't keep the dockets at that time.

Q. Will you produce the docket containing ejectment suit numbered 32,089, 32,181, 32,182 and 32,183?

Mr. DARLINGTON: I object to the question. These law dockets are public records which belong in the office of the clerk of the supreme court of the District of Columbia and neither this witness nor any

other has a right to take them from that place. I don't object to counsel consulting them there or making any use of them he deems proper, but I submit that this witness cannot be called upon to produce them, they being public records, differing in that respect from the memorandum books, prepared by the clerk without authority of law or requirement of the rules of court.

A. You will have to consult the court about that; I have no authority to take them from the office.

Q. Will you present a transcript of the entries in the docket or dockets, containing the suits at law mentioned, showing what, if any entry is made under "E" with respect to these particular suits?

Mr. DARLINGTON: I object on the ground, first: that this is not responsive to the direct examination and it is incompetent, under the guise of cross-examination of my witness, to have him produce at our expense, new original matter, in no way connected with the direct examination. I object in the second place on the ground that if transcripts from public records are required, the proper way to get them is through the clerk who is entitled to his fee for making them, and that they cannot be gotten in the way here proposed.

A. If you will give Mr. Young an order for a copy of these docket entries, and transcripts of particular cases and pay the fee
446 therefor, we will be only too glad to furnish them.

447 WASHINGTON, D. C., *May* 28, 1902.
Wednesday at 2 o'clock p. m.

Present: Mr. J. J. Darlington for defendants;
Messrs. George H. Lamar and Blair Lee for complainant.

CHARLES A. SHIELDS.

Direct examination.

By Mr. DARLINGTON:

Q. State your name, address and occupation? A. Charles A. Shields; 1405 F street, northwest, Washington, D. C.; real estate broker.

Q. How long have you been in that business. A. About nineteen years.

Q. Here in Washington? A. In Washington.

Q. Mr. Shields, are you familiar with square 939 in this city? A. Yes, sir.

Q. Do you know these little houses on Ninth street, in that square? A. I know them by observation in passing. I have known them since they were erected.

Q. Please state whether or not, in connection with your business as a real estate broker, you have become familiar with real estate values in that part of the city. *Q.* Yes; I have made a specialty of real estate in the eastern section of the city for nineteen years.

448 —. Please state what, in your opinion, was the value of the ground which these houses cover in the latter part of 1893 or the early part of 1894?

Mr. LAMAR: We except to that as being irrelevant.

A. In answering that I want to say that the highest price was in 1890, and at about that time it would have been in the neighborhood of ninety cents or a dollar a foot; I think that in '93 it had got down to the neighborhood of about eighty five cents a foot.

Q. And in the fall of '93 or the spring of '94 what would be your estimate? A. About that.

Q. What do you considere it worth now? A. I think it would be difficult to sell it now at sixty cents a foot or more than sixty. Do you include the corner?

Mr. DARLINGTON: No; simply the ground on which these houses stand.

WITNESS: It would be difficult to sell it at sixty cents a foot or more.

Cross-examination.

By Mr. LAMAR:

Q. I- placing your estimate of eighty-five cents a foot on this ground, did you take into consideration the corner or not? A. I took it as a whole and made an entire estimate; that corner is the best of it. I want to say that just before the building of these houses the property was put on the market and was offered to me for sale as a broker, for, I think, in the neighborhood of eighty-five cents, and I couldn't sell it.

Q. You couldn't sell it for eighty-five cents a foot? A. No; that corner and the property on which these houses were built.

Q. It was placed in your hands for sale by whom? A. By
449 Mr. Bradshaw; now, he didn't put it regularly into my hands, but he showed me a certificate of title; I had always understood that it was a tax title or that there was some defect in the title and he showed me a certificate of title.

Mr. DARLINGTON: That is all irrelevant and I move to strike it out as not responsive to the question.

WITNESS: I only want to explain that he offered that property at that time and showed me this certificate.

Q. You endeavored to sell it on the theory that it was a good title and couldn't get eighty-five cents a foot? A. I failed to get it because I knew there was no chance—that you couldn't get it—from my experience.

Q. Could you have gotten seventy-five cents a foot, including the corner? A. I didn't.

Q. Did you make much effort? A. Not very much.

Q. The depression you say commenced in '90? A. I think the

depression in the price of vacant ground commenced in '90 and continued right down to the present time, with the exception—with a few exceptions in the case of new neighborhoods.

Redirect examination.

By Mr. DARLINGTON:

Q. Did you make any offer of this property to anybody? A. I think I spoke to one or two parties, but I can't recollect positively whom.

450 JOHN M. HENDERSON.

Direct examination.

By Mr. DARLINGTON:

Q. Please state your name, age, residence, and occupation? A. John M. Henderson; real estate business; 1303 F street, northwest.

Q. How long have you been in this business? A. I have been in the real estate business since the fall of '87.

Q. To what extent, if at all, have you had experience in the matter of building houses? A. I *I* have been building actively in connection with the real estate business, ever since the summer of '97.

Q. How extensive has been your experience? A. Well, I average, usually, from a dozen to two dozen houses a year, always building for myself.

Q. Do you know these houses on the west side of Ninth street, between B and C streets, northeast, in controversy in this suit? A. Yes, sir.

Q. What, in your judgment, was the ground on which they stand, worth in the fall of '93 or the spring of '94? A. I place the value at about ninety cents a foot in '92 or '93.

Q. What is that ground worth now, in your judgment? A. The demand for vacant ground now, is so inactive it is really hard to place a value on it other than as building lots; I would say that lots there sixteen by a hundred feet are worth twelve hundred dol-
451 lars. I figured that at about sixty cents a foot—seventeen by a hundred feet—I figured that at sixty cents a foot.

Q. Have you made any examination of these houses themselves with a view to estimating their value? A. Yes, sir; I think these houses could be built at this time for eighteen hundred dollars per house; of course the houses are not worth that much as they stand.

Q. What did you find as to the character of the material used in their construction and the workmanship? A. I found it very inferior; I noticed the brick on the rear were laid with rough joints and not struck joints; the struck joints are the best class of labor—the best way of laying brick. That construction upon its face shows plainly that inferior material and labor was used on the work. Then, I found on the south side of the row a great many soft brick on the outside of the walls. The wall had been tarred to keep the

rain out, but there were holes clean through the walls, which I could stand on the outside and see. A good many soft brick had been used on that outside wall, and it not only needed tar but something more.

Q. What is the effect of time on the market value of such property as that if the property is kept in repair?

Mr. LAMAR: Objected to, because the witness has not been shown as qualified to testify on this point.

WITNESS: What length of time?

Mr. DARLINGTON: Eight years.

A. I should say there would be a deterioration of one-third—in other words, that these houses are worth to-day about fourteen hundred dollars and might have cost about twenty-one hundred.

Q. What occasions this deterioration in market value from time?

WITNESS: In the value of the property as a whole?

452 Mr. DARLINGTON: Yes.

A. Wear and tear on the houses, of course; and the progress of improvements in new buildings of the same character, like tiled bath rooms, cabinet mantels, gas fixtures, and so on; also the lowering of rents somewhat by reason of the construction of flat buildings and suburban travel.

Cross-examination.

By Mr. LAMAR:

Q. Mr. Henderson, you say that you have been building principally for yourself? A. Yes, sir.

Q. The-, your prices on the cost of construction are what it would cost you, building for yourself, to construct houses of the character you refer to? A. Not necessarily; because while I know what the net cost of construction is, as we, in building, have to do, it is very easy to add ten per cent. building profits, which is usual. I refer to the price every builder would want, since the laborer is worthy of his hire.

Q. Then, in placing the price of construction at twenty-one hundred dollars for each house, did you add the ten per cent.? A. Yes, sir.

Q. Now, tell us just how you estimated the cost of the construction of these houses?

WITNESS: At the present time?

Mr. LAMAR: Yes, sir.

Q. Well, there are two or three methods we can use; for instance, one——

Q. (Interposing.) How did you calculate it? A. I compared the construction and the character of the houses with constructions I had used myself in six room houses. I also cubed them, which is a method well known among contractors, and while cubing

453 is not an infallible method, it comes within a few dollars of it.

Q. What number of cubic feet did you put these houses at? —. I put these houses as containing eighteen thousand cubic feet each, at ten cents a cubic foot; I put—if these houses were building along the same lines and with the same improvements, I am positive they could be put there for ten cents a cubic foot.

Q. How many of the houses did you go through? A. One.

Q. Which one? A. The north house, I think; I went through at random, without knowing anything of the condition of any of them inside.

Q. You went through the north house, did you? A. Yes, sir.

Q. That is the most exposed to the weather, is it not? A. I should say the south house gets the rain as much.

Q. The south and the north houses are the most exposed? A. Yes, sir; the outside houses would be the most exposed to the weather.

Q. What further process did you go through in making your calculation?

WITNESS: As to cost?

Mr. LAMAR: Yes, sir.

A. I compared them with other plans I had in mind, upon which from time to time, I have obtained estimates of costs, and also with what work I did last year. I built fourteen six room houses last year; containing six rooms and bath—tile bath—furnace heat, concrete cellars, very handsome mantels, electric lighting and good papering.

Q. What was the cost of them? A. Twenty seven hun-
454 dred dollars each.

Q. What was the size of them? A. Seventeen by fifty-five feet; I figured these houses, in this suit, at about thirty feet deep; I am told they are sixteen feet wide, and they are not over thirty-five feet high. That is the way I obtained the cubical contents—by taking them at sixteen feet front by thirty feet deep by thirty-five feet high, which gives somewhat less than eighteen thousand cubic feet.

Q. These buildings have pressed brick fronts, have they not? A. They have.

Q. And stone trimmings? A. Stone bases and some slight stone trimmings over some of the doors; the trimming over the bay windows and along the main cornice is galvanized iron.

Q. In what respect do they differ from the more modern houses in conternal instruction? A. Well, the bath-rooms are very common—these houses have zinc bath tubs——

Mr. LAMAR (interposing): You mean this one, which you examined.

WITNESS (continuing): Being all constructed at the same time, they are undoubtedly all alike inside.

Mr. DARLINGTON: Counsel having interrupted the witness, he should continue and point out the differences he was enumerating.

Mr. LAMAR: But, I will suggest the line which he shall continue on.

WITNESS (continuing): The flush closets are only—; there is no washstand; all the finish is wood, with no tiling; the trimming is ordinary white pine, grained; the stairways are very narrow and very cheaply built; papering on the walls very cheap; gas fixtures unusually so for that character and size of houses.

455 In other words, I put the construction down as being the very cheapest of its kind.

Q. What kind of mantelpieces did they have in the front room? A. Ordinary cabinet mantels in the parlor—I mean on the first floor in the room where the latrobe is.

Q. The same character of mantel that is used now? A. Much cheaper.

Q. Don't you have cheap mantels now — are not that class of mantels used in that character of houses now? A. Not now; for what those mantels cost in '93 you could get a much better mantel now.

Q. But do you not use such mantels now? A. In cheaper houses.

Q. Mr. Henderson, in the sale of real estate, does a piece of real estate on which a house is located sell more easily than one without a house on it at the present time? A. Well, I should say yes; in other words——

Q. (Interposing). Well, how much would you estimate the costs if the house was already constructed, assuming that it was as satisfactory as you wanted it to be constructed—what would be the difference between the price at which property could be sold vacant and that at which it could be sold with houses on it, after deducting the cost of the construction of the houses as you have done? A. Well, I should say that the value of the lot would be greater with the house on it than it would be if the house was not there.

Q. As a matter of fact the price at which property sells depends upon the law of supply and demand and there is a greater demand for property with houses on it than with property with no houses on it? A. Yes, sir.

Q. The rise in the price of labor and material probably has

456 some influence on this I presume? A. I don't see that the rise in the price of labor and material would have any effect on the salability of the property; it might on the building of houses and the cost of each house built.

Q. There is more demand for improved real estate than for unimproved? A. Certainly.

Q. There being more demand for improved real estate, it is worth more? A. It is more saleable.

Q. That is, it is more saleable; there is more demand for it? You heard the testimony of Mr. Shields who just preceded you on the stand—that from 1890 to 1893 or 1894, and from that time on there has been a decline in the value of real estate, as he stated? A. As I recollect, the active market was in 1890, '91, '92 and part of '93, up to the summer of '93 there was an active market here; in fact I know it was with me.

Q. After that time, how was it? A. After the summer of '93 there was a gradual decline.

Q. That is—so the price of ninety cents a foot would represent—A. (Interposing). The highest market value when the market was active? A. Yes, sir.

Redirect examination.

By Mr. DARLINGTON:

Q. Mr. Henderson, what was the cubic cost to you of the houses you say you built last year? A. I built twenty-one and I have often calculated the cost at nine cents per cubic foot.

Q. How do these house in controversy in this suit compare in workmanship, material and finish with the houses which you
457 erected? A. I should have made that ten cents a cubic foot, because I have made it ten.

Q. My question is how do these houses, which you erected, compare with the houses on Ninth street, now in controversy, with respect to material, workmanship and finish? A. The houses I built last year had the very best workmanship in brick work and carpenter work and, in fact, all through; tiled vestibules, tiled bathrooms, furnace heat, concrete cellar under the entire house, two story back porches, very good mantels, gas fixtures and decorations, nickel plumbing in the bath room, porcelain bath-tubs, china hopper closets and wash stands. The houses on Ninth street, as I found them to be, were very ordinary in brick work and carpenter work and have no cellars.

Mr. LAMAR: I object to the answer, as not responsive to the question and as immaterial.

WITNESS (continuing): There is no comparison between them.

Q. You have been asked—— A. (Interposing.) I was going to say that there is latrobe heating, as compared with furnace heating.

Q. You have been asked what improvements have to do with the salability of land—to what extent does that depend upon the character of the improvements? A. To the very fullest extent; the better class of houses will sell for a greater price.

Q. How far, in your judgment does this character of improvements, like these houses in controversy, add to the salability of the land?

Mr. LAMAR: Objected to as leading, and as improper redirect examination.

A. I should say, none whatever.

458 Recross-examination.

By Mr. LAMAR:

Q. How do these houses compare with other houses in that immediate neighborhood—these houses involved in this suit? A. I didn't examine any other houses in that neighborhood.

Q. Were the houses which you built last year in one row? A. Fourteen were in one row and seven in another place.

Q. Did you buy all of the material of the same character from the same parties? —. I bought it wherever I could get the best material.

Q. In building a large number of houses you could get the material cheaper than for just one? A. That applies to a row up to three or four, but you couldn't build twenty any cheaper than you could five or six proportionately; that has been my experience. I am now building sixteen houses and I am quite sure that they will not cost me any less per house to build them than if I was only building five or six.

Q. In building these twenty-one houses to which you refer, what estimate did you make for laying each thousand brick? A. The brick layer's contract price, $14.00 per thousand.

Q. For laying the brick? A. For furnishing the brick and all material in connection therewith and the labor.

Q. What do you pay for laying brick now? A. Fourteen dollars per thousand, the same as last year.

Q. How about carpenter work? A. That is the same as last year.

459 Q. What do you pay carpenters? A. Three dollars a day each.

Q. How about plumbing? A. It is cheaper this year than last: you — there is a see-sawing in material. Some is higher and some is lower. Lumber is 15 per cent. higher than last year and plumbing is slightly less.

Q. What else is higher than last year? A. Lumber and mill work—nothing else.

460 A. LINCOLN HOUGH.

Direct examination.

By Mr. DARLINGTON:

Q. State your name, address and occupation? A. A. Lincoln Hough, patent attorney; Atlantic building.

Q. Mr. Hough are you in charge of collecting the rents for these houses in controversy in this suit? A. I am and have been for one year.

Mr. LAMAR: Objected to as immaterial.

Q. When you took charge when Mr. Acker gave them up, did you find *th* them occupied by tenants? A. I found them all occupied.

Q. What rent do they bring? A. I have been getting $20.50 a month during the last year.

Q. What rent were they under when you took charge? A. I can't swear as to that; I understood that it was the same I am getting.

Mr. LAMAR: I object to that part of the answer which is hearsay.

No cross examination.

461 JOHN W. HULSE.

Direct examination.

By Mr. DARLINGTON:

Q. State your name, age, residence and occupation? A. John W Hulse, Washington, D. C.; stenographer.

Q. Are you a member of the firm of Smith and Hulse? A. Yes, sir.

Q. And for some years your firm has been engaged in reporting stenographically trials in our courts? A. Yes, sir; for twelve or thirteen years.

Q. Did your firm report the three ejectment suits between the Ashley heirs and Aaron Bradshaw?

Mr. LAMAR: Objected to as irrelevant and immaterial and I ask that this objection be made general, to apply to each question.

Mr. DARLINGTON: I consent to that.

A. Yes; I don't remember the name of each particular party; it was that series of cases.

Q. Can you tell us the amounts you have been paid for stenographic reports of those trials?

Mr. LAMAR: It is agreed that my objection shall be general.

A. I find on our books that the charges in the trial of 1897 were three hundred and sixty dollars for each side; there was a copy furnished to each side and a bill rendered each side; three hundred and sixty dollars each, which would be $720.00.

462 Q. How much have you been paid by the plaintiffs in the ejectment suits? A. Nehemiah B. Ashley (was he the plaintiff—that's right) $360.00; that was paid by the plaintiffs or one of them. In 1898 a bill was rendered against each of the parties for $342.75.

Q. Did the plaintiffs pay their proportion of that? A. No; there was deducted thirty-seven dollars and fifty cents from their bill for some reason which I presume was a good one, leaving $305.00, which they paid.

Q. Now, in 1901? A. Our books for that part of the year are in the hands of an expert book-keeper to straighten out. It was somewhere about thirty dollars—a very small amount.

No cross examination.

463 HENRY F. BEARDSLEY.

Direct examination.

By Mr. DARLINGTON:

Q. State your name, residence and occupation. A. Henry F. Beardsley; Montrose, Pennsylvania.

Q. Are you one of the defendants in this suit? A. I am.

Q. Who was the active representative and agent of the present defendants in the ejectment suits referred to in the bill?

Mr. LAMAR: I object to the question as indefinite, not specifying in what particular the same may be relevant to any issue in this case and the part of the transaction embraced within the inquiry and generally because no foundation has been laid for the question.

A. I was.

Q. Please state whether or not you were present at the first trial in these suits, namely the case of Joseph R. Beardsley, which resulted in the withdrawal of a juror?

Mr. LAMAR: Objected to as being leading and irrelevant in relation to this case.

A. I was.

Q. Can you tell us what was the cost to the plaintiffs in these suits, the defendants here, from the time they were originally brought down to their final conclusion?

Mr. LAMAR: I object to that question, because it relates to
464 the suit, erroneously brought and is in no sense bearing upon the proper defense of this case, and second as being irrelevant and immaterial.

Mr. DARLINGTON: My question relates to the cost of the entire ejectment proceedings from that time down to their final conclusion.

Mr. LAMAR: We renew our objection—as to the entire cost of the ejectment proceedings.

Mr. DARLINGTON: I agree that Mr. Lamar may have the benefit of these objections as though specifically stated upon the record, with reference to each question and the answer thereto.

A. Including counsel fees, stenographer's bills, etc., it would be in the neighborhood of eight thousand dollars.

Q. Costs to whom? A. The defendants in this case—the plaintiffs in the ejectment suits.

Q. In what condition, as to taxes, did you find the property in controversy at the end of that litigation? A. We found that default had been made in the payment of taxes and that the costs to the parties in interest, who are defendants in this suit, on that account have been in the neighborhood of seven hundred and fifty dollars.

Q. To what extent, if at all, did the ejectment suits interfere with

the uses to which the parties defendants to this suit desired to put that property, or to make of it during their currency?

Mr. LAMAR: I object to the question as being purely hypothetical.

A. We were really anxious to sell this real estate; we—none of the parties in interest, were able to hold this property as an investment, and by reason of these ejectment suits we were entirely estopped from making a sale or disposing of the property.

465 Cross-examination.

By Mr. LAMAR:

Mr. LAMAR: Counsel for complainants reserving his objection heretofore taken as to the relevancy and materiality of the testimony of this witness, cross-examines him as follows:

Q. You say that this litigation, in connection with the ejectment suit—that the costs of this litigation to the defendants in this suit, "would be" about eight thousand dollars—will you please explain what you mean by the words "would be"? A. If I used that term it was a term I didn't intend to use.

Q. Has the eight thousand dollars been actually paid? A. It has either been paid or we are under obligation to pay it.

Q. Will you state in what those items consist? A. Well, there were counsel fees——

Q. How much?

WITNESS (continuing) —and stenographer's bills——

Mr. DARLINGTON: Objection waived.

Mr. LAMAR: You don't specify the items, but simply state how much in a lump sum—$8,000.00—we want to know what it is for—you state it without letting us know what it is for.

WITNESS: Counsel fees——

Q. (Interposing.) How much? A. Fifty-seven hundred dollars.

WITNESS (continuing): Stenographer's bills for the three suits amounted to, I think six hundred dollars—in the neighborhood of six hundred dollars. In the suit of 1895, the judgment of the New Orleans people, I should say the judgment which Bradshaw, assisted by the New Orleans people obtained against us——

Mr. LAMAR: I object on the grounds heretofore stated.

466 A. The costs of that in the way of witness fees and other expenses was about seven hundred dollars.

Q. That was in the Beardsley case? A. Yes, sir—which you forced us to pay. Then, in connection with the 1897 suit, which occupied four weeks in court, there were some extra expenses in connection with getting papers from Annapolis, Maryland, witness fees and expenses, amounting to about four hundred and fifty dollars. The appeal that was taken from that suit—the expense of that to us was in the neighborhood of fifty dollars. The 1901 suit, the expenses and witness fees, were in the neighborhood of two hundred

and fifty dollars—I think that will approximate eight thousand dollars, but there might be a little discrepancy.

Q. Mr. Beardsley, I presume—did you pay these bills? A. I paid the bills that have been paid—I disbursed all the money.

Q. Have you vouchers and receipts for the payments you made? A. I have them at home; I haven't them here—that is, of course, I haven't a receipt from every separate witness and some other extra expenses.

Q. What vouchers have you at home? A. I have the subpœnas, etc., and receipts of the witnesses—some of them—and so forth, which I have paid; I have the stenographers' bills receipted. The court costs, of course, would show for themselves, I suppose, I have no receipts for them.

Q. Will you add to your testimony before it is signed, the several receipts which you have received for moneys paid?

Mr. DARLINGTON: I submit that counsel have no right to require the filing of these receipts; I am quite willing that they shall be forwarded here, inspected by counsel and produced at the hearing.

467 Q. Mr. LAMAR: In the absence of the production of these receipts I object to the testimony of the witness, who says that the receipts are in his possession, they being the best evidence, the amounts given by him being manifestly a mere estimate.

Mr. DARLINGTON: These papers will be produced and submitted to counsel and produced at the hearing. I do not think that counsel can seriously think that he has a right to the impounding of these receipts in this case.

Q. Did you keep any books? A. I kept an account for the other parties in interest.

Q. Where is that? A. At home.

Q. Will you also produce that? A. I can give a copy of the statement I made to the parties in interest.

Mr. LAMAR: But the book of original entries, I mean, and counsel here gives notice that he desires and proposes to urge as a matter of right the opportunity to cross-examine this witness after the receipts have been produced.

Mr. DARLINGTON: This notice of counsel is very inequitable, under the circumstances of this case. Counsel are perfectly aware of the urgency to the defendants of having a hearing of this cause at the next term of the court; they are also aware that repeated extensions of time were given them for taking their testimony, all of which extensions went to reduce my time for taking the testimony of defendants. They are not technically entitled to these receipts, because they are without the jurisdiction. I will consent to having the receipts brought here, submitted to counsel for examina-

468 tion and produced at the hearing, but I will not consent to having the testimony delayed for that purpose and I do not think it ought to be asked, under the circumstances.

Mr. LAMAR: We renew and repeat our objection to the statement or estimate of the witness, and will have to insist upon the same and call for the vouchers, which he had in his possession and has failed to produce at this hearing, and voluntarily left without the jurisdiction of the court.

Q. Now, what was the cost, Mr. Beardsley, of the suit, which you say, was unsuccessful on your part, some time in 1895, the suit brought by Joseph R. Beardsley—what was the cost, the total cost of that suit?

WITNESS: You mean the expenses of the suit?

Mr. LAMAR: The whole cost of that.

A. I think I said it was in the neighborhood of seven hundred dollars between six and seven hundred.

Q. Was that in addition to counsel fees? A. No, I have stated counsel fees and stenographer's bills together.

Q. In regard to counsel fees, did you have a written contract? A. In regard to a portion of them there was.

Q. Have you that contract? A. I have not.

Q. State whether or not there was involved in this contract, with reference to these suits, other buildings or property besides that on which the houses in controversy in this suit were erected? A. It was the property in litigation. There has never been any distinction between the property on which those houses stand and this other land. It was the property that you had been fighting us about and we had been fighting you for ten years.

Q. How much land was involved in the ejectment suit, the original suit, brought against Bradshaw? A. Something over twenty-one thousand feet.

469 Q. You mean as originally brought? A. You say originally brought, what do you mean by that?

Q. The first suit brought? A. Oh, you seem to be "chawing"; the ejectment suit you mean, the first one of these ejectment suits included one lot and then it was amended to include all the land in controversy, amounting to something over twenty-one thousand square feet.

Q. How much of that land is involved—is occupied by these houses? A. How much of this land?

Q. Yes, sir. A. Nearly half.

Q. Then, there was involved in the ejectment suit to which you have referred more than as much again of land with respect to which these complainants are not interested?

Mr. DARLINGTON: I object to the question, because the testimony shows that this complainant here, or his predecessor, the New South Building and Loan Association, employed counsel to resist the entire ejectment suit and not the part involved in this suit, so, of course, the distinction is not capable of being made.

A. We never knew of any other party in interest we were fighting in the suit, except Aaron Bradshaw until 1895. He was the man of straw.

Mr. LAMAR: I object to the answer as not responsive to the question.

Q. I ask you again Mr. Beardsley, if the land covered by the houses, or embraced within the lots on which the houses in controversy in this suit stand, was not less than the balance of the land which was involved in these ejectment suits with respect to which you have mentioned these costs? A. I say that the land upon which these houses stand constitutes something over ten
470 thousand square feet, and the land upon which the ejectment suits were brought included an area of nearly twenty-one thousand *and* feet.

Q. You stated a moment ago that Bradshaw was the straw man that you were fighting—to whom did you refer as being the real party in interest? A. We filed—when we filed these ejectment suits we were under the impression that Bradshaw was the lessee of John H. Walter.

Q. These expenses which you have mentioned and the fees, had relation to the cost of the litigation with regard to all the real estate—did they not? A. These were the expenses in regard to the ejectment suits which we have been prosecuting for the last ten years.

Q. These were the costs from the beginning to the present time? A. The expenses, only a part, but the main part, not all I have mentioned, have been incurred since 1895 and during 1895.

Q. Before 1895, you did not incur much expense? A. There were no trials.

Q. Prior to October 25, 1898, was there any written contract for counsel fees? A. No, sir.

Mr. DARLINGTON (after various remarks between counsel and examination of papers): Please note that that question is asked, after the contract had been produced and submitted for the inspection of counsel for complainant, as requested by them.

Mr. LAMAR: Produced at the voluntary suggestion of Mr. J. J. Darlington.

Mr. DARLINGTON: Not at the voluntary suggestion of de-
471 fendant's counsel, but at the request of complainant's counsel and without objection on my part.

Mr. LAMAR: Do we understand Mr. Darlington as offering this contract—copy of contract—of October 25, 1898, in evidence; if so, we waive exception to it being so offered on the ground of its being a copy. It is the desire — counsel to properly represent the interests of their client and at the same time not to go into the relation between attorney and client further than is actually necessary to the proper protection of the interests of our clients; but as this attorney's fee question has been asserted as an equitable defense, we object to the answer of the witness assuming the same and counsel has failed, as it was incumbent upon him to do, to introduce the contract in evidence and allow us the opportunity to cross examine the witness with respect thereto.

Mr. DARLINGTON: Counsel are perfectly aware that I did nothing in the nature of offering that contract in evidence; I recognized their right to pursue their own view of duty in the conduct of their case, and if they think that contract is a proper subject of evidence I shall not object to its being offered by them, but I have my own ideas as to the propriety of it.

Mr. LAMAR (to witness): Will you state when these counsel were retained in the ejectment suits?

WITNESS: Messrs. Darlington and Worthington?

Mr. LAMAR: Yes.

A. Mr. Darlington came into the case, I th ink, in 1891; Mr. Worthington before the trial of 1895.

Q. Will you state what was the character of contract in existence with counsel, as to amount, at the date—on the 20th day of November, 1893? A. General Mussey was the first counsel in the
472 case, and Mr. Darlington (am I correct, Mr. Darlington), in saying about 1891?

Mr. DARLINGTON: You had better give your own recollection.

WITNESS (continuing): Mr. Darlington was then employed and a retainer paid and that was all that ever was paid.

Q. State the amount of these retainers? A. I think one hundred dollars.

Q. For both counsel? A. I am not sure in regard to that; I think a hundred or a hundred and fifty dollars.

Q. Mr. Beardsley, from that time until the present, what amount has been paid, actually, to counsel for services rendered in connection with the prosecution of these ejectment suits? A. I think five hundred dollars.

Mr. LAMAR: The terms and conditions with regard to the payment of counsel fees, being contained within a written instrument, counsel move to strike out of the record, and will renew the motion at the trial, the testimony of this witness as to the amount of attorney's fees; at the same time suggesting their willingness that if counsel for the defendants see fit to introduce a copy of the contract in evidence, in lieu, and in the absence, of the original, no objection will be urged to the contract on that ground.

Q. Mr. Beardsley, you speak of a sum paid for taxes, have you the tax receipts or are they among the receipts which you are to exhibit? A. Are you referring to my testimony in regard to the amount of damages we were put to by the default made——

Q. I refer to your testimony in regard to some seven hundred dollars, which you say you paid as taxes? A. You are mistaken—there is no such testimony of mine.

473 Q. Well, what sum did you pay for taxes? A. The testimony that I gave there was in regard to the damage by the default, made to us in redeeming and paying the delinquent taxes.

Q. Since when have you paid taxes on this land? A. Paid up to 1892.

Q. Haven't paid any since? A. We have not paid until we came into possession of the property last year.

Q. Didn't you claim that property as your own? A. We have always claimed it as our own.

Q. And didn't pay taxes on it? A. The property was taken out of our possession—that is why we were obliged to bring these ejectment suits to regain it.

Q. Isn't it a fact that taxes were paid on this land in 1894? A. Any portion of it?

Q. Yes. A. I think taxes were paid on a portion of it.

Q. Up to 1894 were they paid by Bradshaw or Walter? A. I think the first sale was in 1894.

Q. You stopped paying taxes on it because you were out of possession of it? A. We were out of possession in March, 1892. Mr. Walter made a pretended sub-division of these four original lots which was recognized and the property assessed to him and his grantees after 1892.

Q. Before Mr. Walter got possession of this property when you were paying taxes on it, say in 18—, what income did you get from the particular land embraced in this equity suit? A. Well, there was some income from pasturage from this particular land; I perhaps could not identify this particular land, but I think so.

471 Q. It was used then for pasturage was it—no houses on it? A. I couldn't say whether there was a house on this particular land or not.

Q. Did you pay taxes on it at that time? A. We did.

Q. Did you get anything like as much from pasturage as you paid in taxes? A. We did not.

Q. Was there any appreciable difference, then, between the income you got from the time you parted with the possession until the time these houses were built? A. We received no income from it after 1889, when it was inclosed by the defendants in the ejectment suit by a wire fence.

Q. Then all the income you received before that from this particular land was for pasturage, was it? A. I couldn't say in regard to that; there was sod sold and turf.

Q. Was there any sod sold from this particular land? A. I cannot tell.

Q. As a matter of fact, Mr. Beardsley, was there any real, substantial, income from this particular land? A. It was unimproved.

Q. It was unimproved? A. Like a great deal more in that and other sections of the city.

Q. And when Bradshaw and Walter were in possession of it you ceased to pay taxes on it? A. There was no tax assessed against us.

Q. There were no taxes assessed against you? A. Not after 1892.

475 Q. That would not have prevented you from paying the taxes if you ha- wanted to pay them, would it? A. It would not have prevented, I suppose.

Redirect examination.

By Mr. DARLINGTON:

Q. Mr. Beardsley, please state what this sub-division by Walter had to do with your non-payment of taxes?

Mr. LAMAR: I object. That is irrelevant.

Mr. DARLINGTON: It is agreed that Mr. Lamar may here enter a general objection, which shall apply all the way through.

A. As I remember, the sub-division was made in 1892, and was recognized at the tax office, and when we went there to pay taxes we found that there were no taxes against us, but taxes were assessed in the name of Walter and some of his alleged grantees.

Q. Why didn't you pay the taxes according to the subdivision? A. Because we didn't recognize Mr. Walter or Mr. Bradshaw as having any title or right to the land, and we feared that if we paid according to the sub-division, we would have recognized Mr. Walter's right to subdivide the property.

Q. What proposition, if any, did you make the District authorities in that connection? A. I went to the tax office and asked for bills, for tax bills, on this property, which was original lots three four and five and six, and they furnished me with bills for the taxes on the sub-divisions as made by Walter and in his name and Leta Morse and Lydia Hoagland and some other parties.

Q. What proposition did you make to the District authorities? A. We made the proposition at that time that we would pay the taxes if they would furnish us a bill for the original lots—

476 for the taxes on *on* the original lots 3, 4, 5, and 6.

Q. Was that accepted by the authorities or not? A. It was not.

Q. You have been asked as to what proportion of the ground covered by the ejectment suits is covered by these buildings; what distinction, if any, in the ejectment suits was made by the counsel of the building association in respect to the ground covered by the buildings and that not covered by them? A. Not any.

Q. Who was the active counsel in the defense of these suits—the most active of the four who appeared?

Mr. LAMAR: We object.

Mr. DARLINGTON (continuing:) Who examined the witnesses and made the arguments. A. Mr. Mattingly.

Recross examination.

By Mr. LAMAR:

—. Mr. Beardsley, who was the counsel for Mr. Bradshaw? A. I never knew any distinction between them?

Q. Never knew any distinction between Bradshaw's——

WITNESS (interposing:) I knew Mr. Ridout was counsel in the

matter, but they all appeared; the first suit was in 1895 and Ridout and Acker and Miller and Mattingly——

Q. (Interposing). Who was the first attorney who appeared in the ejectment suits prior to 1895? A. You mean the attorney for Bradshaw?

Q. Yes. A. I don't know, but I think Ridout; I do not know whether there was anybody associated with him or not.

477 Q. What attorney actively took charge of the examination of witnesses in the trial of 1901? A. Mr. Ridout; Mr. Mattingly had dropped out of the case.

Q. As a matter of fact, don't you know that Mr. Ridout had been the attorney for Mr. Bradshaw all the time? A. As a matter of fact, I do not know it.

Q. During the progress of the trial in 1897, isn't it true that Mr. Mattingly was taken sick? A. He was absent a day or two.

Q. Wasn't he absent for two weeks during the trial? A. My recollection is that it was only for a few days.

Q. Will you say that Mr. Mattingly was not absent for two weeks during that trial? Q. My recollection is that he was not absent any such length of time as that.

Q. Who actively took part in the trial during the time Mr. Mattingly was absent? A. 1897

Q. Yes. A. Mr. Miller, Mr. Acker and Mr. Ridout.

Q. Did either Mr. Miller or Mr. Acker cross examine any witnesses? A. I think not.

Q. Mr. Ridout was actively in charge of that case, wasn't he? A. I think, after Mr. Mattingly was taken ill.

Q. Were you present at the trial of that case? A. Yes. I was.

Q. Do you remember when Mr. Acker was placed on the stand? A. I know he was on the stand; I cannot tell when.

478 Q. Do you remember when Mr. Acker was asked the following question: "Do you know whether any loan was granted on security of the ink numbered lots 1, 2, 3, and 20, in square 939, or any part of it prior to March, 1893" and counsel for plaintiff objected to the introduction of testimony with respect thereto?

Mr. DARLINGTON: I object to this question as not being responsive to the examination of this witness and I shall move to exclude the question and answer on the ground that it is matter in no particular responsive to the testimony offered on behalf of the defendant and which, if competent at all, is so as a part of the plaintiff's case in chief.

A. If you will refresh my memory; if I should see it in the record I should say such a question was asked.

Mr. DARLINGTON: I object, and move to strike out the answer as not responsive.

Q. Then you also remember that counsel objected to the question? A. If I should see that in the record I would remember it; if you

want to refresh my memory—it was five years ago; I cannot remember all the details of a four weeks' trial.

Q. But you know there was an effort made at that time to keep from the jury reference to evidence in regard to this building association having a loan on this property?

Mr. DARLINGTON: Objection, and notice, repeated, and protest made against the question as a violation of not only the rules of evidence, but of propriety.

A. I do not know of any effort.

Q. You speak of some proposition from you to the Commissioners, was that in writing? A. I think there was a communica-
479 tion in writing to the Commissioners in regard to the matter, but I went there personally, to the tax office, and called for the bills.

Q. But, your communication to the Commissioners themselves was in writing? A. That is my recollection; it is a long time to recall these things.

Mr. LAMAR: We give notice of motion to strike out the witness' testimony in respect to the matter contained in the written communication.

Q. Did you not know when you went to the District Commissioners that the District authorities were recognizing the ink numbered lots as contradistinguished from the pencil numbered lots in this square? A. I did not go — the Commissioners at all.

Q. When you went to the tax office, didn't you know that the tax office was recognizing the ink numbers in contradistinction from the pencil numbered lots? A. I knew that the District office, the tax office was recognizing lots 3, 4, 5 and 6 under Mary Baldwin's subdivision of the square under which we had been paying taxes and have receipts for for nearly twenty years.

Q. Well, how did it happen that it got assessed to Mr. Walter, then, claiming through ink numbered lots, if they didn't recognize the ink numbers as contradistinguished from the pencil numbers?

Mr. DARLINGTON: It does not appear, and it is not a fact, that the ink and pencil numbers had anything in the world to do with this change of names in the assessment; the fact is that Walter put on a deed——

Mr. LAMAR (interposing): Hold on, Mr. Darlington, you are testifying.

Mr. DARLINGTON (continuing): —from people claiming to be the heirs of Walker. He also made this pretended sub-division and the District authorities thereupon assessed the lots according to it, as
480 counsel can find on the slightest attempt to do so on the records, it being their well known custom to make transfers on the tax books whenever a deed is made, without any inquiry into the genuineness of the transaction.

WITNESS (interposing): They used to do that: they don't now, I believe.

Mr. DARLINGTON (continuing): If I should put a deed of record to Mr. Lamar's property, they would transfer it to my grantee and tax it to him. I object, therefore, to the assumption of counsel as wholly unsupported by anything in the evidence, that the confusion between the ink and pencil numbers had anything in the world to do with this change in the assessment of taxes.

Q. You say you based your proposition to the Commissioners on the number lots 3, 4, 5, and 6? A. To the tax office; you are talking about the Commissioners all the time and, of course, I was dealing with the collector.

Q. Your letter was to the Commissioners, wasn't it? A. I had no dealing with the Commissioners, but with the collector or assessor.

Q. Then, how did your claim happen to be under the pencil numbers 3, 4, 5 and 6, was it simply because your grantors recorded a tax deed, through which you claim? A. We were owning seven lots in that square, 3, 4, 5, 6, 7, 8 and 9, on which we paid the taxes. We never knew them by any other numbers.

Q. And they rested on tax deeds, did they not? A. They did not, except one lot—3—which came through the Brents, down to us.

Q. From whom did the Brents get it? A. From the city tax sales, seventy-five years now.

Q. From whom did the other people get theirs? A. You mean the other lots 4, 5, 6, 7, 8 and 9?

481 Q. Yes. A. The United States, through William T. Baldwin who was one grantor, or my brother-in-law's who died.

Q. He claiming through the pencil numbers? A. I knew nothing about any pencil numbers.

Q. You say this property was assessed at one time in the name of Lydia Hoagland and also in the name of Leta M. Morse, are you certain of that? A. The bills were made out from the tax office in her name.

Q. Each of their names? A. I think so; I think some lots, some of the sub-divided lots of Walter's pretended sub-division, were in his name and some in Lydia Hoagland's and some in Leta M. Morse's name.

——— ———.

Subscribed before me this — day of ——— A. D., 1902.
NOTE.—

———— ————,
Examiner in Chancery.

NOTE.—The witness, Henry F. Beardsley, on appearing to sign his depositions submits the following statement:—

In addition and explanatory of my answers to questions relating to book of original entry on page 31 I wish to state that my account of disbursements made in the matter was kept in pocket memorandum books, from which I made statements of all expenses I paid for my colleagues, the other plaintiffs in the suit. I will forward the

books, if I can find them; if not a sworn copy of the statements made as aforesaid.

——— ———,
Examiner in Chancery.

482 JOSEPH J. DARLINGTON.

Direct examination:

Mr. DARLINGTON: In view of the somewhat unanticipated course the testimony has taken, I think it is, perhaps, necessary that I should give some account of my professional connection with this case, in-so-far as the question of counsel fees is concerned. I was originally retained as assistant to Mr. Mussey—the late General Mussey—and received a counsel fee of one hundred dollars. I never had any other contract, and know of no other, except a mere *quantum meruit* understanding, until on or about the 11th day of April, 1898, which I submit to the inspection of counsel for defendants in this case. Nothing further has been paid to me in money. After the New South Building and Loan Association employed Messrs. Mattingly, Miller and Acker in the ejectment suits, Mr. A. S. Worthington was employed to assist in the prosecution at my instance, and was paid a retainer of two hundred and fifty dollars. Since that time nothing has been paid to him to my knowledge. When the ejectment suits ended the disposition of the property by the successful plaintiffs was prevented by the pendency of this suit, and Mr. Worthington and I agreed that the balance of counsel fees due us, $5150.00, might remain unpaid for a period of three years, to be represented by promissory notes aggregating that amount and secured by deed of trust upon a portion of the property. I have prepared these promissory notes and that deed of trust, but have not yet received them, because the parties are widely scattered, and although the deed was prepared in April, it has not yet come back executed by the parties. I have submitted to the gentlemen representing the complainants the typewritten copy of this agree-
483 ment, having mislaid the original, which I thought I had, and they are at liberty to offer it in evidence, without objection on my part, if they desire so to do.

I perhaps should add that the action of the plaintiffs in the ejectment suits in refusing to pay the taxes *under* on this property under a sub-division made by Mr. Walter was upon my advice. I advised them that their doing so might be a recognition by them of Walter's title, since only an owner can sub-divide, and that as he was putting titles in the names of third persons the question might be a troublesome one. After the abortive Joseph R. Beardsley suit, counsel for Walter and for the building association, although they put no witness on the stand, insisted on the payment of witness fees to witnesses whom they had called. I opposed the taxing of these fees but it was successfully insisted upon by Mr. Mattingly and a judgment in that case for costs given, which I paid with money furnished

by Mr. Beardsley, the amount being $278.95. I desire further to say that the counsel fees in this case do not include any charges for the Joseph R. Beardsley suit, that suit having been brought erroneously in the name of an heir, while the tenant by the curtesy was legally entitled. The fees cover the trial of an ejectment suit which lasted four weeks, if I remember correctly, in the circuit court, and then went to the Court of Appeals, presenting some very interesting technical questions, and then to the Supreme Court of the United States; and further preparation and trial for the three other ejectment suits, which suits, however, gave very little trouble at the trial, defendant not attempting to defend the title any further, but which suits required preparations by counsel over a difficult and interesting question, in case defendants in the suits had attempted to set up the title.

Mr. LEE: Counsel for defendants desire to note that there was no opportunity for objection at an earlier period in this testimony,
484 and that they do now object to it as irrelevant, immaterial and apparently giving the substance or some of the details of a written contract, which for some reason the witness does not produce with his testimony.

Mr. LEE: I wish the stenographer would strike out the words "for some reason."

Mr. DARLINGTON: I object to the stenographer so doing and insist that the language remain as it was taken down. I wish to give my reason

Mr. LEE: Counsel for plaintiff object to any proof of the contract or agreement between the defendants in this case and their counsel, except the contract itself, and they object to the testimony of the witness, which purports to give the substance or effect of that contract.

Mr. DARLINGTON: The only reason I have for not producing the original of this contract is the one I stated. I had it and I have diligently looked through the papers where it ought to be and I have not found it. I have produced and submitted to counsel a copy, and so far as my not putting this contract on record goes, I want to say distinctly that there is nothing in the contract of which I am ashamed, as evidenced by the fact that I have submitted copy to counsel. I shall not be put in the position of making it a part of the record, because I have my own views of the propriety of so doing, at the same time not assuming to criticise at all the views which other counsel have on the subject. The copy is, however, on the table before them, and it can go in without objection, if they see fit to put it in.

Mr. LEE: Counsel desire to note on the record that from the beginning of the consideration of this question to the present they have desired to avoid the necessity for the introduction of the instrument itself, and at the same time get of record what they deemed to be the contingent phases of that instrument. They have been unwilling to assume the burden of introducing an instrument which
485 embraced what seemed to have been the subject matter of the oral testimony of the witness Beardsley; that if opposing

counsel is prepared to say that this contract has been superseded by a subsequent arrangement as to which the witness testified as yet being in a tentative form, it would seem that the contents of this instrument itself might not be necessary to be introduced; and if this tentative arrangement has been agreed to by all parties of interest, counsel are willing to accept Mr. Darlington's oral testimony as to the matter of counsel fees to be paid for this service, and counsel desire to urge and to have it distinctly understood that there is no desire whatsoever on their part to transcend or have counsel transcend the points of any of the niceties of the profession.

Mr. DARLINGTON: I desire to correct a misapprehension. There never has been a tentative contract in this case that I am aware of, and I certainly did not intend to testify to any tentative contract or arrangement.

Cross examination.

By Mr. LEE:

Q. Then, I understand you, Mr. Darlington, to say that the plan for the giving of notes aggregating $5100.00, has already been agreed upon by all the parties? A. Oh, yes; they found it impossible to sell the land or to mortgage it because of this suit, and we agreed that payment might be deferred, Mr. Worthington and myself.

Q. You say these notes are secured on a part of the property, can you state which part? A. Three of the sub-lots; I don't know which.

Q. Do they embrace the lands involved in this suit? A. Yes, three of these lots.

486 Q. Three of the lots on which the houses have been constructed? A. Yes, I think they are the most southerly three of the six lots.

Q. When did you give the advice, Mr. Darlington, about not paying the taxes? A. I can't fix the date on which I first gave that advice It was at the time my attention was first called by the plaintiffs in the ejectment suits to the fact that the lots were assessed in the names of persons other than themselves and in accordance with the sub-division made by Mr. Walter.

WITNESS (continuing): I have just been handed a letter of mine by Mr. Beardsley. The date does not enable me to fix the day when I first gave them that advice. The letter is one which I wrote Mr. Beardsley.

Q. Can you state whether it was before or after November, 1893, that you gave this advice. A. It was subsequent to 1893, I am satisfied. I was not very active in this case while General Mussey lived.

Q. When did he die? A. I can't tell; prior to 1895, some time.

487 Mr. DARLINGTON: Counsel announces testimony for the defendant closed, reminding counsel on the other side of the agreement that the case should be calendared for the June term.

and I now propose that this be done, with the understanding that opposing counsel may take their testimony in rebuttal at any time before the case is actually reached for hearing. I further agree to produce for examination and any use they may see fit, such receipts and other written data as to expenses which Mr. Beardsley was put to, and if we can get this before he leaves the city, I will agree that they may further cross-examine him. I further agree that if the case should be reached for hearing earlier than ten days from this date, I will unite in an application to the court to pass it until after that time.

488 *Rebuttal Testimony for Complainant.*

Filed October 23, 1902.

In the Supreme Court of the District of Columbia.

WASHINGTON, D. C., *June* 13, 190–,
Friday, at 10 o'clock a. m.

Met, pursuant to agreement, at the office of Messrs. Geo. H. Lamar and Blair Lee in the Fendall building, to take testimony on the part of the complainant in rebuttal.

Present: Messrs. George H. Lamar and Blair Lee for complainant. Mr. J. J. Darlington for defendants.

WALTER H. ACKER.

Direct examination.

By Mr. LAMAR:

Q. Mr. Acker, you have heretofore testified, I believe, that you were present during the trial of the case of Nehemiah B. Ashley, against Aaron Bradshaw—state whether or not Mr. James A. Ashley testified in said trial and whether or not you were present and heard him?

489 Mr. DARLINGTON: I object; this is not rebuttal, and not only so it is proven already in the plaintiff's case in chief. I move to strike out any answer.

A. Yes, sir.

Q. State what, if anything, Mr. Ashley stated with regard to whom he represented in connection with the possession of the land in controversy in this case?

Mr. DARLINGTON: I object on the ground that this is a part of the plaintiff's case, in chief, if competent at all; and upon the further ground that an agency cannot be proven by testimony of his own statements or admissions. I shall move to strike it out.

A. Mr. Ashley stated that he represented himself and the others heirs to the property in controversy, and, acting in such capacity, he had collected rents from certain frame shanties that were on the prop-

erty and also sold sod off the ground and also rented the place for the pasturage of cows.

Q. His testimony as to the shanties and his other statements,—did they refer to this property alone, or all the property embraced in the ejectment suits?

Mr. DARLINGTON: Objected to on the ground already stated; and on the further ground that the witness' opinion as to what Mr. Ashley referred to is incompetent.

A. It referred to the ground generally.

Q. Mr. Acker will you state whether or not, Mr. Henry F. Beardsley, one of the defendants to this suit, was present during the trial and at the time that Mr. Ashley testified?

490 Mr. DARLINGTON: Let it be understood that my objection to each and every of these questions and any answers that may be made thereto, applies without the necessity of reiterating the same upon the record.

Mr. LAMAR: It is so agreed.

A. Mr. Beardsley was present throughout the whole trial.

Q. Did Mr. Beardsley or any of the other heirs, or any one, deny, at any time during this trial, the statements made by Mr. James A. Ashley, with regard to his representing the other parties interested? A. I cannot recall any such testimony.

Q. If there had been such would you not recall it? A. I think so.

Q. State whether or not Mr. Ashley, in said testimony, made reference to any other action on his part under his authority mentioned? A. He testified with reference to his connection with Bradshaw in reference to tearing down the fence and demanding possession of Bradshaw, at the time the one-story structure was built upon the corner.

Cross-examination.

By Mr. DARLINGTON:

Q. When was it, Mr. Acker, that Mr. James A. Ashley said that he had collected rent, sold sod, and rented the pasturage? A. During the period of several years—I can't recall the particular year which he stated he had done so.

491 Q. Wasn't that at a period some years anterior to Bradshaw's attempt to take possession? A. I think that is a fact.

Q. Do you recall his testimony of any action done by him as agent for any of the heirs, simultaneous with or subsequent to Bradshaw's attempt to take possession? A. My understanding of his testimony, at the time he tore down the fence——

Mr. DARLINGTON (interposing): I am not asking for your understanding.

Mr. LAMAR: Let him answer in his own way.

Mr. DARLINGTON: No; I object to his understanding. My ques-

tion is not, what you understood, but what did Mr. Ashley say, and I ask you whether he stated that he represented any of the heirs in any active agency subsequently to the time when he was collecting rents from the shanties, selling sod and renting pasturage? A. I cannot answer that.

Q. You speak of Henry F. Beardsley as being present during the whole trial—is your recollection clear about that? A. I think with the exception of one day, he was present throughout the trial; of course I can't state positively, day by day; that is my recollection.

Q. Don't you recall that during the course of the trial a question arose as to whether what the War Department called the record of squares or the corresponding book in the surveyor's office, was the original record book and don't you recall that Mr. Beardsley
492 absented himself from the court house for more than a week, making a comparison of those two alleged records, and finally testifying square by square, throughout the entire city, as to their points of correspondence and difference with the original surveys?

Mr. LAMAR: Question objected to in so far as it constitutes quasi testimony on the part of counsel.

A. I recollect the fact that he was absent for a while; as to whether it was a week or not, my impression is that it was shorter than that time.

Q. You remember don't you, that his testimony covered a comparison, square by square and lot by lot, of all the squares in this city, contrasting the original surveys, first, with the alleged record of squares in the War Department and secondly, with the corresponding book in the surveyor's office? A. I think that is a fact.

Q. Do you or not, recall whether he was present at any time while Mr. James A. Ashley's testimony was being given? A. Well, I can't state positively that he was present at that time.

Q. Was any one of the other heirs present at any time during the trial? A. I think not.

Redirect examination.

By Mr. LAMAR:

Q. Mr. Acker, will you state whether or not, this investiga-
493 tion which Mr. Darlington refers to was made after the completion of the examination in chief or before? A. I am not clear on that.

Mr. LAMAR: Counsel here introduces a copy of the testimony, as incorporated in the record, of Henry F. Beardsley and James A. Ashley.

NOTE.—And the same is filed by the examiner and marked "Exhibit W. W. M. No. 40."

Mr. DARLINGTON: I object to this paper on the ground, first: that it is not rebuttal testimony or proper rebuttal to any testimony

offered on behalf of the defendants; second, if it is any part of complainant's case at all, it should have been offered in chief; third, that the statements made by Mr. Bear-ley, are incompetent because he was not interrogated in regard to them when he was on the stand in this case; fourth, in regard to Mr. Ashley, they are incompetent as against anybody but himself, it being incompetent to prove agency by the declaration of the alleged agent; fifth, on the ground that an abstract from the bill of exceptions, is not competent evidence for any purpose against any of the parties to this cause.

Q. Mr. Acker, will you look at this paper—this copy of the testimony of Henry F. Beardsley and James A. Ashley, constituting Exhibit W. W. M. No. 40, and state whether or not Henry F. Beardsley, testified immediately preceding the testimony of James A. Ashley to which you refer?

Mr. DARLINGTON: I object; it is incompetent for the witness to inspect this paper; it neither purporting to be, or in fact having been, prepared by himself; second, that the order in which the testimony of witnesses is digested in the bill of exceptions, is of itself, no evidence of the order in which they testified; and still less, is it competent to take the opinion or judgment of the witness as to the order of the testimony, based on an inspection of an abstract from a bill of exceptions.

A. It appears from this certified copy that he did.

Q. State what is your recollection on the subject, Mr. Acker, as to the relative times at which they testified? A. My recollection is that James A. Ashley, followed Mr. Beardsley, but I am not certain.

Recross-examination.

By Mr. DARLINGTON:

Q. Mr. Acker, please point out the portion of that paper, called a copy of the bill of exceptions, which shows that Mr. Beardsley testified immediately before Mr. Ashley?

WITNESS (reading from paper indicated): In part of his testimony he says "I know James A. Ashley, who is in court," and then he goes on and gives the general history of the family, but there is no reference here specially to James A. Ashley following Mr. Beardsley.

Q. Now, do you or do you not, recall that Mr. Ashley testified on three separate occasion- during that trial, being recalled for the purpose and that his testimony was all put together in the bill of exceptions? A. He did testify several times and on different days.

Q. And in that paper you find his testimony digested as if
495 it had all been given at one time? A. Yes, sir.

Q. And isn't it also true that Mr. Beardsley testified on two or more days? A. Yes, sir.

By Mr. LAMAR:

Q. Mr. Acker, look at that paper—have you read it carefully? (Handing witness Exhibit W. W. M. No. —.) A. No; I have not.

Q. Do you know, as a matter of fact, that it contains the testimony given by Messrs. Beardsley and Ashley when they were recalled? A. I do not know; I have not read it over.

Q. There are no lines upon the paper showing omisssions are there?

Mr. DARLINGTON: I object; the paper speaks for itself; I object to examining this witness as to what the paper shows.

Q. State whether or not Mr. Beardsley testified on this occasion relative to the heirship and produced the family Bible? A. That, I think, was at his first testimony.

Q. State whether or not the first part of James A. Ashley's testimony didn't refer to the same subject? A. I referred to the question of family; yes, sir.

Mr. DARLINGTON: I still object to having the witness testify as to the contents of a paper.

By Mr. DARLINGTON:

Q. You are basing your answers to these questions on this
496 paper which Mr. Lamar calls copy of the record as embodied in the bill of exceptions? A. Yes, sir; as to this question.

497 JOHN R. YOUNG.

Direct examination.

By Mr. LAMAR:

Q. Mr. Young, will you state your name and occupation? A. John R. Young; clerk of the supreme court of the District of Columbia.

Q. How long have you been such clerk? A. Since October, 1891.

—. As such clerk are you the custodian of the records of the clerk's office of the supreme court of the District of Columbia? A. Yes, sir.

Q. Mr. Young, I will ask you to look at the certified copy constituting a part of Complainant's Exhibit 35, which I show you,—it is a certified copy of the docket entries in at law No. 32,039—I ask you to notice in the column headed "Action," the words "ejectment, lot 1, square 939," and state what, according to the mode of bookkeeping in your office at that time, that would indicate?

Mr. DARLINGTON: I object to this as being utterly immaterial to any of the issues in this case and as calling for an expression of opinion.

A. It indicates exactly what it purports to be on the face of it—that it was an action of ejectment.

498 Q. What land does it purport to involve? A. Lot one, square 939, as it states there.

Q. Mr. Young, state whether or not, from the face of that docket,

there is anything to show an addition to the suit of any further or other real estate?

Mr. DARLINGTON: I object to this and all similar questions and any answers thereto, on the ground, first; that it is not rebuttal, secondly; that it is calling for the opinion of the witness as to the original entries which speak for themselves, third; on the ground of incompetency and irrelevancy to any issue in the case, and I give notice of motion to strike out.

A. If I understand you, you want to know if there is an-thing on this paper showing any other property than that originally included in the action?

Mr. LAMAR: Yes, sir.

WITNESS: No, but the inference is that there might be other property, because there is a note of an amended declaration, but there is nothing to show what that amendment is; it might be in the name of a person, description of property or something else; there is nothing to show the nature of the amendment.

Q. State whether or not, you can refer me to any other instances where property has been added by amendment, after bringing suit? A. No; I cannot.

Q. Did you ever hear of such instances before? A. Oh, I can't tell whether I have heard of it or not. I might have heard
499 of it, and it has gone out of my mind; it is something which I would not fix on my mind among the thousands and thousands of suits and amendments filed in the office I wouldn't undertake to state whether I had ever heard of such a thing or not?

Q. You compiled an index of ejectment suits from March 24, 1863, to December 7th, 1892, did you not? A. I did.

Q. In the compilation of that book, did you have occasion to learn the custom in regard to filing ejectment suits and amendments thereto, and so on, in your office?

Mr. DARLINGTON: Will counsel please indicate what part of defendant's testimony, he regards this in rebuttal of?

Mr. LAMAR: I am laying a foundation for testimony which will be recognized as rebuttal.

Mr. DARLINGTON: In rebuttal of what part of defendant's testimony?

Mr. LAMAR: That will appear when the testimony is given.

Mr. DARLINGTON: Does counsel object to stating for the information of opposing counsel and to avoid unnecessary objection, what portions of defendants' testimony, it is supposed that this will tend to rebut?

Mr. LAMAR: The question asked now is for the purpose of laying the foundation to meet the objection of counsel, as to the competency of this witness, and for the purpose of introducing testimony, and counsel will show its relevancy at the proper time.

Mr. DARLINGTON: But to rebut what?

Mr. LAMAR: For obvious reasons counsel declines to be in-
500 terrupted in his examination of the witness in his own way; opposing counsel has the right to make any objections which he sees fit.

Mr. DARLINGTON: I advise counsel that he will be interrupted when this alleged testimony is offered to the court and the court's attention invited to what I must regard, under the circumstances, as an unjustifiable consumption of the time of both counsel and court.

WITNESS: I don't know what you mean.

Q. I meant to inquire by my question—after the suit, the filing and keeping of the records? A. I don't know that I learned anything new while compiling that book, having been in the office fifteen or twenty years.

Q. In the compiling of that book, did you have occasion to look at the original papers in pending cases? A. In many cases I did.

Q. In any of these cases did you——

WITNESS (interposing): In many of the old dockets the description of the property was not given; where it was given there, I took it from the docket, and where it was not given I would have to go to the papers to get a description of the property.

Q. In any of these cases do you recall that there were added any new lands by way of amendment to the declaration, after the original declaration had been filed? A. I do not remember any.

Q. In case such amendment is made, in order to have the effect that the same does incorporate new lands, not embraced—
501 any other land than that embraced in the original declaration, what, if any precaution, is necessary to be taken by counsel, in the matter of indorsement of such amended declaration?

WITNESS: Indorsement where and on what?

Mr. LAMAR: Indorsement on the back of the amended declaration.

A. That is a matter that we don't have any interest in, or any knowledge of; I don't know that I have ever seen an amended declaration that indorsed the property on the back of it—either an amended or an original declaration—they merely indorse "declaration, notice to plead etc." on the back of it; the chances are they don't indorse it even as an ejectment case; we have to find that out by examining the papers.

Q. You don't recall a single instance in which new property was added—didn't you say in your testimony that you didn't recall a single instance where new property was added by an amendment? A. By an amendment—entries on the back of the papers,—of the declaration—I don't recall.

Q. Do you recall an instance in which new property, I mean other property, has been added by way of amendment to the original declaration, other than that contained in the original declaration? A. I do not know what you mean, I am sure.

Q. You have already testified on the subject? A. Not that shape of question.

Q. Will the stenographer please read the question? (Stenographer reads the last question.) A. This case is one, I suppose; I do not know of any others; I do not compare the original and amended declarations unless my attention is called to it.

Q. It would be shown on your records if the attorney called attention to the fact that new property had been added? A. It probably would.

Q. If such attention be not called, it would, in all probability not be noticed? A. The clerk does not examine amended declarations; it is not his business to do that.

Q. It is not the custom of the office of the clerk and has not been, to examine amended declarations, since the compilation of this general index? A. Not at all.

Q. In addition to the general index of ejectment suits from March 24, 1863, to December 7th, 1892, state whether or not there is any such index in your office commencing with December 7th, 1892? A. Well, there is the index of the docket on which it is recorded.

Q. Then, in addition to that, there is kept in your office volumes ordinarily known as indexes to ejectment suits? A. These indexes were prepared for the exclusive use of the office, there being no law requiring them to be kept, but when I came to be clerk, I saw that the dockets were being used and to save the wear and tear of the dockets and for the convenience of the clerk in referring to these matters, I had these indexes prepared,
503 and through courtesy allowed the attorneys to look at them.

Q. Since these general indexes have been prepared and placed on the shelves in your office, local counsel and other parties have been granted free access to them? A. Yes, sir.

Q. State whether or not they are used by attorneys generally? A. I suppose they are; I don't watch the attorneys to see what they use—they can use them if they choose.

Q. You see these books used don't you? A. I don't watch attorneys when they come in but I suppose they use them.

Q. Did you ever see a representative of a title company using one of them? A. I couldn't tell you that they do.

Q. Can you recall ever seeing one look on the mechanics' lien docket? A. Frequently.

Q. The general index to equity suits? A. Yes, sir.

Q. You compiled that general index in the same way? A. Yes, sir; had it compiled.

Q. Was there any provision of law requiring such compilation? A. No, sir.

Q. The general index to judgments of the court was compiled in the same way, was it not? A. Yes, sir.

504 Q. These general indexes are on the shelves, subject to use in the same way and are used are they not? A. Oh, yes;

all these indexes that you named; neither one of them was required to be kept by any law, prior to the adoption of the code. Since the code they require a judgment docket to be kept and an attachment docket.

Q. But these dockets are kept with the same care as if they were required by law? A. Certainly; they would be no use to us if not.

Q. And are relied on as if they were required by law?

Mr. DARLINGTON: I object—how in the world does counsel expect the witness to testify as to what other people rely on.

A. We rely on them; I couldn't answer as to what reliance other people put in them.

Q. From your experience in the office, state whether or not these general indexezes are not the most accurate docket data that you have on the subject of pending ejectment suits? A. The dockets themselves are more accurate—those are the original entries.

Q. You said awhile ago, if I remember you correctly, that in some of the law dockets, there was nothing on the face of the docket itself, showing the land embraced in the ejectment suit? A. Merely the fact that there was an ejectment suit.

Q. And this compilation was made by going through the papers? A. When there was no description of the land noted on the docket.

505 Cross-examination.

By Mr. DARLINGTON:

Q. You say that you, yourself, rely upon these indexes—for what purpose? A. If a person comes in and wants to know about a certain ejectment suit or a certain piece of property, we can turn to the books and get it without running through each docket.

Q. They are simply books of reference then? A. Yes, sir.

Q. Please state whether or not they were prepared for or as far as you knew, used as guarantees of title by title searchers? A. They were not prepared for that purpose at all; they were prepared for our own convenience and saving the wear and tear of dockets. In any other way we would have to go over each docket, looking for ejectment suits; we would have to take the dockets sometimes, and turn over leaf by *by* leaf.

Q. You have been asked something about the superior accuracy of these books as compared with the general dockets—how do they compare with the original papers as to accuracy? A. I don't know what you mean exactly.

Q. You have been asked whether these general indexes or your regular dockets are the best source of information in regard to pending suits. My question, is, whether the papers in the suits are not more accurate than either? A. As to the description of the
506 property—the description in the docket might be very short; it just might be Georgetown property, or county property.

Where there is a long description it would be impossible to put it in the docket. For instance you see here, such descriptions as that. (Indicating a lengthy description in the book called General Index of Ejectments.) It would be impossible to put that in the docket; then it would be necessary to go — the papers.

Q. Please state whether or not the original papers in these ejectment suits, are always accessible to persons having business with them? A. Yes, sir, they are; they are public records and accessible to any one.

Q. You have stated that you don't remember any addition of property, by amendments, to ejectment suits—do you remember the nature of the amendment in any of the ejectment suits? A. I do not, except in this one to which my attention has been called—that is all.

Q. Have you any reason to doubt, or to believe that there might not be very many instances of property being added by amendments in ejectment suits? A. I know nothing about it.

Q. Do you recall any instance in which any attorney called your attention to the nature of the amendment, made by him in any suit? A. I do not.

Q. That, if I understand you, is a matter that does not con-
507 cern the clerk at all? A. Not at all. We don't record the declaration, merely make a note of it—the amended declaration—filed; don't examine it.

Q. How long has this general index of ejectment suits existed in your office, or anything analogous to it? A. This book was prepared prior to January, 1893.

Q. Was that the first one? (Indicating ejectment docket No. 1.) A. Yes, sir; this was the one that was taken up to bring up the cases from 1863. It was typewritten by Mr. Behrman. He has put the date here, (that is the only note to guide me); after that was done, it was written on typewriting paper and the book was sent to the printer to be bound. How long it was in the hands of the printer I have no way of knowing.

Q. That was the latter part of January. These general indexes to ejectment suits had been only a few months in existence and of access to the public?

Mr. LAMAR: We object.

A. It was probably put on the counter not more than two months—in January, 1893, the first part of January, 1893.

Q. As I understand, this was a mere private act of the clerk himself, not called for by any rule or law, and to which no notoriety was given? A. No, sir.

Q. Were any circulars of notice given to the bar? A. No, sir.

508 Redirect examination.

By Mr. LAMAR:

Q. You say these general indexes, as well as the general indexes to equity suits, and the general indexes to the law judgments, were

prepared with the idea that it would save the handling of dockets? A. Yes; the wear and tear is what I said.

Q. Has the preparation of these books had that effect? A. Undoubtedly.

Q. Who ordinarily handles these dockets? A. People who are coming in there searching for suits—members of the bar and searchers for the title companies; any one who is seeking information may handle the dockets; they are public records and accessible to them.

Q. And it was anticipated that in saving the handling of the general dockets, members of the bar and other people and the clerk would use the general indexes instead? A. Yes, sir.

Q. As to these law dockets which did contain on their faces, the land which purported to be involved in the suits, you simply accepted such entry as tru- in making up this digest? A. I think that was the case.

Q. In the others, the papers themselves were examined? A. Yes, sir; I had to go to the papers to get the description.

Q. State whether or not this plan of having these general indexes has been a source of assistance in accurately procuring the
509 information desired, as above the old system. A. It has been a great assistance to us; I can't speak for other people.

Recross-examination.

By Mr. DARLINGTON:

Q. Has that assistance been in the direction of greater accuracy or in the direction or easier reference? A. Easier reference; as to accuracy the papers are always accessible.

Mr. LAMAR: I offer in evidence a certified copy of the list of ejectment suits contained in law docket 36 of the supreme court of the District of Columbia, noted under the letter "E" in the index to said docket.

Mr. DARLINGTON: I object to this as not being rebuttal, and as not having any materiality and on the further ground that there is no law or rule of court for the preparation of any list of ejectment suits, hence no certified copy of any such paper can be admitted.

Same is filed by examiner marked "Exhibit W. W. M. No. 41."

NOTE.—Adjourned until further notice.

510 *Motion for Leave to Amend Original Bill.*

Filed October 23, 1902.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant, vs. JAMES A. ASHLEY ET AL., Defendants. } Docket 50. Equity. No. 22257.

Now comes the complainant, by Blair Lee and Geo. H. Lamar, his solicitors, calling attention to the evidence as introduced in this cause in support of the allegations therein, hereby renews motion for leave of court to amend the original bill herein, and moves the court that the same be amended by inserting after paragraph 14 and before paragraph 15, the following:

"14 A. That in addition to the abstract and certificate of title, as signed by said W. E. Aughinbaugh under date of May 26, 1893, as aforesaid, there was a continuation of title made by the District Title Insurance Company from the 1st day of June to the 23rd day of September, 1893; and a further examination and continuation of title was made by Walter H. Acker, an attorney of the District of Columbia, in which said Acker made a personal examination of the records from the 26th day of May to and including the 1st day of November 1893; that in making said examination said Acker had occasion to and did carefully examine all entries as to lots in square 939 then found in the two volumes purporting to contain a complete general index to all pending ejectment suits as said volumes were then kept by the clerk of the supreme court of the District of Columbia and universally used
511 by those examining or making continuations of title; that, as originally filed, none of the aforesaid ejectment suits, pending at the date of said deed of trust, affected any part of the land involved herein; that when the same were so amended as to include said land, the plaintiffs therein, well knowing the fact that said Bradshaw was capable of practicing the very character of fraud perpetrated in this instance and that, in making continuations of title any lawyer would rely on said general index for reference to any pending ejectment suits, utterly failed and neglected to advise and have the clerk of said court make the necessary entries on said general index of ejectment suits so that when said indexes were examined by said Acker and said District Title Insurance Company said general indexes failed to show or indicate pendency of any such suit or suits as those which, by amendment as aforesaid, had been made to apply thereto within the knowledge and at the instance of these defendants or those through whom they severally claim; but for which failure and neglect on the part of said plaintiffs in said ejectment suits and the defendants herein pendency of such suits would have

been brought to the attention of said association notwithstanding the fraud of said Bradshaw, Walter and Aughinbaugh, as aforesaid, and the said building association would never have advanced any part of the said sum of $20,000.00 to the benefit of the defendants and injury of said building association as aforesaid."

After the word "cause" in line three of the fourth prayer of said bill insert the following clause; "the plaintiff expressly waiving answer under oath to the amendment to the bill of complaint."

BLAIR LEE,
GEORGE H. LAMAR,
Solicitors for Plaintiff.

512 DISTRICT OF COLUMBIA, *To wit:*

George H. Lamar, being sworn in due form of law deposes and says that the foregoing amendments are offered in good faith, not for the purpose of vexation, or delay; that the omissions in said general index were not discovered by the plaintiff or the counsel for the plaintiff herein until about the 10th day of May; that a similar motion was filed and brought to the attention of the court in the month of May and before the defendants closed their testimony herein, which said motion was overruled without prejudice to its renewal at this time on or about the 27th day of May, A. D. 1902; that the matter of the proposed amendments is material and could not with reasonable diligence have been sooner introduced into the bill.

GEORGE H. LAMAR.

Subscribed and sworn to before me this 23rd day of October, 1902.

J. R. YOUNG, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

513 *Decree Dismissing Bill.*

Filed January 27, 1903.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Receiver,
versus
JAMES A. ASHLEY ET AL. } No. 22257. Equity.

This cause coming on to be heard upon the pleadings and the evidence, and having been argued by the solicitors for the parties, respectively, and duly considered, it is thereupon by the court this 27th day of January, A. D. 1903, adjudged, ordered and decreed that the complainant's bill be, and the same hereby is, dismissed with costs, and that the defendants have execution therefor as at law.

A. B. HAGNER,
Asso. Justice.

514 *Opinion.*

Filed February 5, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

JOHNSTON ARMSTRONG, Ancillary Receiver, Complainant, *vs.* JAMES A. ASHLEY ET AL., Defendants. } No. 22257. Equity. Doc. No. 50.

The plaintiffs and the defendants charge each other with the knowledge of facts, which create a liability by its opponent or a defense to its claim to recover.

1. The defendants charge that the association when it delivered its money to Bradshaw was chargeable with knowledge, actual or *constitutive*, of the existence of the suits involving the title to the land.

It would be idle to contend that Bradshaw and those connected with him and the company to defraud, as charged by the complainant, was not aware of the existence of the suits, for he was actually defending, in one court or another, such of them as had not already gone to judgment. Nor could it be supposed that Walter, the alleged leader in the fraud charged who was one of the local board of the association; or Aughinbaugh, the counsel of the association, were not equally aware of the same facts. Had the *complainant* association, through its officers, such knowledge? If they had the means of knowledge at hand and neglected to avail themselves of them, the association must be equally held to possess the requisite knowledge.

The entries on the records of the court, accessible to all who
515 chose to examine them, would have informed any intelligent inquirer of the existence and condition of the suits. Parties are not allowed, with such lights before them, to close their eyes and insist they did not see what was obvious upon ordinary inspection. The association necessarily would be obliged to employ an attorney to make the requisite searches; but whether it neglected to employ any attorney at all or employed one incompetent or dishonest is immaterial. The defendants are not to blame, if Aughinbaugh was the knave the complainant charges he was, and was bribed by the extra fee paid him by Bradshaw out of the money lent by the association.

I have decided to consider the new matter charged in the amended bill, as to the absence of the names of some of the ejectment cases from the subsidiary list of the suits, voluntarily made up in the clerk's office for the supposed convenience of attorneys. But being improvised by the clerk, without legal requirement, it would be impossible to receive the index as competent evidence of

the contents of the dockets; and no attorney would feel he had properly performed his duty in making a search, if he should content himself with running down that list, instead of examining the original entries of the ejectment suits in the legal dockets. With what justice can a party plaintiff in some of the cases be held answerable in any way for the omission from the list of the names of cases he has properly instituted and which were regularly entered on the appropriate court docket. When the counsel has filed his declaration with the clerk he will have done all he is required to do, and whatever remains to be done in the way of indexing
516 the cases is to be attended to by the clerk without any responsibility for the officer's omissions of officials on the part of the plaintiffs; and there is no ground for the charge that the plaintiffs in the suits were culpable because the clerk made mistakes.

But apart from the notice imputed to the plaintiff by the presence of the suits on the dockets and on the regular indexes, the evidence sufficiently shows the plaintiff had sufficient actual information to put him on inquiry at the least, as to the existence of the suits from other sources. In the letter of the chief attorney of the New Orleans company to Acker, its local counsel in Washington, written in October 1893, before the money was paid over, the writer refers to the former equity suit brought by the present defendants against Walter and others, which prayed for an injunction upon the same grounds as those set forth in the defendants' answer in the present case. That bill charged fraudulent and illegal acts on the part of Walter and his confederates in undertaking to seize possession of the lots which were claimed to belong to the plaintiffs therein, (the present defendants) and specially described the suits past and then existing, and denied to Walter and Bradshaw any manner of right to the possession of the lots. The letter also called attention to the fact that the bill referred to had been dismissed only "for want of prosecution," and "without prejudice," and invited special attention by Mr. Acker to these facts.

The conclusion that there must be imputed to the association knowledge of the various suits that had been brought by the defendant before the advance of the money by the association, is supported by the effect of the whole evidence on both sides;
517 particularly to that of Acker who is written to in his character of local attorney of the association in Washington. And if, as I am forced to believe, the imputation of such knowledge must be charged against the complainant association, its possession and control of the improvements upon the lots cannot be considered as that of an innocent holder without notice.

2. On the other hand the association charges that the defendants must have known of the erection of the houses during the six or seven months they were in process of building, and further that they were being built with the money of the association on land to which the defendants claimed Bradshaw had no just right; and yet, as they insist, the officers of the association,

stood by in silence and gave no information to the association to prevent the further progress of the fraud of Bradshaw, Walter and their associates.

To the charge that the defendants personally knew of the advances by the association towards the erection of the buildings, they interpose in their answer a positive denial; but they admit that, although wholly ignorant of the sources from which the money came, shortly after learning that one Childs was engaged in their construction, they notified him in writing Jan. 1894 (which was some two or three months after the commencement, and about three months before the completion of the houses) that the work was done without their authority and that he would be held liable as a trespasser upon their premises; and further that it was not until Feb'y 1895 that either of them learned of the advances made by the association, or of the deed of trust of the property held by it.

518 Although there is no evidence contradicting either of these denials, nor of actual knowledge possessed by the defendants of the matters thus denied, still it seems to me there is evidence in the record that facts might readily have been ascertained by them from which they might well have learned at an earlier time, of the building, and of the source from which the money employed was derived.

Recalling their former experiences with Walter and Bradshaw in the erection of the brick shanty on these lots; their forcible defense of that building, and their possession and enclosure of the lots, with their subdivision by Walter, the defendants under their conviction of the illegality of the means by which they had been thwarted in the obtention of their rights by Walter and his associates, might well have assumed that any similar practices respecting the property should be ascribed to the same parties. The slightest inspection would have shown that before their notice to Childs the excavations and buildings were in progress on their lots; and the land records would have disclosed the numerous conveyances of the lots, all suspicious in their appearance, which culminated in the deed to Bradshaw and his deed of trust to secure the asssociation for the large amount of $40,000.00 named therein; all of which must have been printed and generally read by business people, in the register of conveyances published every week day. If the defendants knew nothing of all this, they were probably only of the small minority of business men who had not observed it. I therefore think knowledge of these conveyances and of the deed of trust to the association at earlier dates than those assigned in the answer must be imputed to the defendants.

519 Whether the possession of such knowledge imposed upon them the duty, from charitable or equitable motives, of warning the association, after it had received the deed of trust, that it had made an unfortunate bargain, is another matter. If the land belonged to other people, clearly the defendants were under no obligation, in the philanthropic spirit, to intermeddle with the business.

But the buildings and the conveyances concerned the property of

the defendants, and although, *strictissima juris*, they might await the consequences of another man building his houses on their land, yet it would have been better, at the earliest period when they learned of the trespass, to have notified the aggressor that he would be held answerable for the wrong.

Has the complainant been injured by the delay of the defendants to give this notice to the builders in the intervening time, between October 1893 and Jan'y 1894? I think not. The association, with its eyes open and really with full constructive notice and through its agent, as I find, and with the equivalent of full actual notice, had deliberately entered into this agreement binding itself to pay the installments; and had agreed to advance more than one half the $20,000. within a few days after the deed of trust was recorded. If the defendants had given notice of their adverse title as soon as the notice of the building permit of the 20th of November 1893 was published in the newspapers; or even in the last of October when the deed of trust was recorded, they would thereby have imparted no information not already imputable to the association.

520 3. The contention of the complainant association, that the defendants had such early notice of the commencement of the houses and that the money was furnished by the complainant, that if the defect in Bradshaw's title had at that time been communicated to the association it could have saved itself from loss by withdrawing from its bargain with Bradshaw; and that as the defendants neglected to communicate this information to the association and in silence watched the expenditure, therefore equity should decree a lien upon the property for the benefit of the association, is predicated of the postulate that the person thus laying out the money was a *bona fide* holder or purchaser, *without notice of any defect in his title.*

Under such conditions, *when the real owner seeks the aid of equity to establish or enforce an equitable claim* to the property, the courts will require him to make compensation for the amount expended on improvements to one who has laid out his money innocently and in good faith, supposing himself to be the owner, upon the principle *that he who seeks equity must do equity.* But it is part of the principle itself that the rule is otherwise, where the person making the improvements had knowledge of the true state of the title. Such is the statement of the doctrine in 19 Eng. & Am. Enc. of Law, pp. 20-'1 cited by the complainant's counsel. And it is also settled by the weight of the authorities that the courts will not interfere to grant *active relief* to a *bona fide* purchaser who without notice of the true state of the title has made permanent ameliorations and improvements, if he brings such suit in equity against the true owner after the latter has recovered the property at law.

521 Such was the undoubted understanding as to the state of the law, in England and in this country and it was thus explicitly laid down in 2 Story's Equity Jurisprudence section 1237 from the earliest edition, including the third edition published under Justice Story's imprimatur, in 1843.

But at the May term 1841, Mr. Justice Story then sitting alone

in the case of Biggs *vs.* Boyd (1 Story C. C. Rep.) expressed a strong doubt as to the propriety of this distinction and declared he would give *active relief* at the application of the evicted purchaser. The opinion must have created great astonishment when it became known, which was on the publication of the fifth edition of his Jurisprudence more than ten years after the death of Judge Story. However strong may have been his language, it was at best but the decision of a single judge against the undoubted decisions of all the great courts before it was made.

In 20 Howard 538 Williams *vs.* Gibbs, decided in 1857, the Supreme Court adheres to the former statement in the earlier editions of Story which are quoted in the opinion.

In 111 U. S. 66 Canal Bank *vs.* Hudson, decided in 1884, there is no indication of any change in the opinion of the court, although the opinion cites the unchanged text of Story section 1237 in connection with case of Bright *vs.* Boyd 1 Story C. C.; showing the court had observed the departure in the latter case from the ancient doctrine and refused to be governed by it. And in 133 U. S. 561, Chief Justice Fuller adheres positively to the ancient text of Story, and makes a citation from it, almost in *totidem verbis*.

522 In our courts, 1 MacArthur 217 Sheldon *vs.* Prather, Mr. Justice Wylie cites the rule in the old form of words with approbation; and the decision of the Court of Appeals in 14 Appeals, Anderson *vs.* Reid, is a positive declaration of its intention to be governed by the important and ancient statement of the doctrine, as given in the original text of Story—

I have no doubt whatever that this decision in the last named case, sustained as it is by the unbroken authority of the Supreme Court and numbers of other authorities, fully justifies my decision and decree.

A. B. HAGNER.

Appeal.

Filed February 16, 1903.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, *vs.* JAMES A. ASHLEY ET AL. } Equity. No. 22257.

Now comes the complainant, Johnston Armstrong, ancillary receiver of the New South Building and Loan Association of New Orleans, Louisiana, by his solicitors, and appeals to the Court of Appeals of the District of Columbia from the decree entered in the above entitled cause on the 27th day of January, 1903, dismissing the bill of complaint herein with the amendments thereto.

BLAIR LEE,
GEORGE H. LAMAR,
Solicitors for Complainant.

523 *Memorandum.*

February 16, 1903.—$200 deposited by complainant in lieu of appeal bond.

Order for Citation.

Filed February 18, 1903.

In the Supreme Court of the District of Columbia, the 18th Day of February, 1903.

JOHNSTON ARMSTRONG, Ancillary Receiver, *vs.* JAMES A. ASHLEY ET AL. } Eq. No. 22257.

The clerk of said court will issue a citation on the appeal herein of Johnston Armstrong, ancilliary receiver for the New-South Building and Loan Association of New Orleans, Louisiana, against the following appellees herein, to wit: James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley and Joseph R. Beardsley.

No copy need be made.

BLAIR LEE,
GEORGE H. LAMAR,
Solicitors for Appellant, Johnston Armstrong, Ancillary Receiver.

524 In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, *vs.* JAMES A. ASHLEY ET AL. } No. 22257. In Equity.

The President of the United States to James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley, and Joseph R. Beardsley and Emma B. Jenkins, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal noted in the supreme court of the District of Columbia, on the 16th day of February, 1903, wherein Johnston Armstrong, ancillary receiver for the New South Building and Loan Association of New Orleans, Louisiana, is appellant, and you are appellees, to show cause, if any there be, why the decree—rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 18th day of February in the year of our Lord one thousand nine hundred and three.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 18th day of February, 1903.

J. J. DARLINGTON,
Solicitor for Appellees.

525 *Directions to Clerk for Preparation of Record.*

Filed March 20, 1903.

In the Supreme Court of the District of Columbia.

JOHNSTON ARMSTRONG, Ancillary Receiver, vs. JAMES A. ASHLEY ET AL. } Equity. No. 22257.

Now comes the appellant, Johnston Armstrong, ancillary receiver of the New South Building and Loan Association of New Orleans, Louisiana, by Blair Lee and George H. Lamar, his solicitors, and gives notice that he does hereby designate the following parts of record to constitute the record on appeal to the Court of Appeals, to-wit:

1. Original bill of complaint filed May 3, 1901, with all of exhibits constituting A, B, C and D thereto.
2. Copy of return noted on summons issued May 3, 1901.
3. Joint answer on the part of defendants, filed February 3, 1902 with all exhibits thereto constituting A and B.
4. Separate answer of Joseph R. Beardsley, filed February 26, 1902.
5. Replication to joint answer.
6. Replication to separate answer.
7. Motion for leave to amend, filed May 27, 1902.
8. Order May 27, 1902 overruling motion, without prejudice to renewal.
9. Interrogatories and cross-interrogatories propounded to and testimony of A. Allison together with stipulation of counsel
526 on the last page of return of commission; also Exhibit AA No. 2 and pages 4 to 21 inclusive of Exhibit AA No. 3, latter being by-laws of said association.
10. All of balance of testimony in chief in behalf of complainant, exclusive of formal parts, being depositions of (*a*) J. H. Kennard, pages 1 to 31 inclusive; (*b*) Johnston Armstrong, pages 31 to 68 inclusive; (*c*) James J. Becker, pages 69 to 82 inclusive; (*d*) John D.

Coughlan, pages 83 to 90 inclusive; (*e*) Walter H. Acker, pages 91 to 131 inclusive; (*f*) Richard M. Evans, pages 133 to 139 inclusive; (*g*) E. W. Stockstill, pages 140 to 144 inclusive; (*h*) August J. Neff, pages 146 to 147 inclusive; (*i*) Appleton P. Clark, Jr., pages 148 to 154 inclusive; (*j*) Frank M. Angelo, pages 155 to 164 inclusive; (*k*) Thomas W. Smith, pages 165 to 173 inclusive; (*l*) W. H. Acker, recalled, pages 174 to 189 inclusive; (*m*) Henry E. Stringer, pages 190 to 195 inclusive; (*n*) B. M. Norris, pages 196 to 197 inclusive; (*o*) Fred A. Eberle, pages 198 to 202 inclusive; (*p*) Cary H. Fielding, pages 203 to 206 inclusive; (*q*) Henry F. Getz, pages 209 to 211 inclusive; (*r*) Charles Childs 212 to 220 inclusive; also notations and stipulations of record as made by counsel in the record from page 1 to and including page 220.

11. All of testimony on the part of defendant, exclusive of formal parts, consisting of the depositions of (*a*) Alfred G. Buhrman, pages 1 to 10 inclusive; (*b*) Charles A. Shields, pages 11 to 13 inclusive; (*c*) John W. Henderson, pages 14 to 23 inclusive; (*d*) A. Hough, page 24; (*e*) John W. Hulse, pages 25 to 28 inclusive; (*f*) Henry F.
527 Beardsley, pages 27 to 45 inclusive; (*g*) J. J. Darlington, pages 46 to 50 inclusive; also all stipulations and notations of counsel contained in said pages from 1 to 51 inclusive, save and except the last seven words in line 8 and the first 13 words in line 9 on page 42 of said record.

12. All of testimony of complainant in rebuttal, except formal parts, consisting of depositions of (*a*) W. H. Acker, pages 1 to 9 inclusive; (*b*) John R. Young, pages 10 to 22 inclusive; also all stipulations and notations of counsel from pages 1 to 22 inclusive of said testimony in rebuttal.

13. Exhibits to the testimony on the part of complainant as follows:

Exhibit No. 1 (application for loan) omitting questions 8, 17, 18, 19, 20, 21, 22, 23, 24 and 25 with diagram under question 8, the other relating to improved property; also omit such blanks on back of exhibit as are not filled in; Exhibit No. 2 (loan slip); Exhibit No. 3 (letter to local attorney October 23, 1893); Exhibit No. 4 (abstract of title), including endorsements on the back of each paper; Exhibit No. 5 (affidavit of Bradshaw), Exhibit No. 6 (local-board and builder's certificates); Exhibit No. 7 (affidavit of contractor); Exhibit No. 8 (proposed advertisement for sale); Exhibit No. 9 (letter from Acker *to* September 11, 1894); Exhibit No. 10 (power of attorney from Bradshaw to Acker), including endorsement showing time and place of record; Exhibit No. 11 (bond—same as Exhibit D of bill of complaint, all except endorsements) endorsements in red ink; Exhibit No. 12 (bond against mechanic's liens);
528 Exhibit No. 13 (application for stock), including endorsement; Exhibit No. 14 (letter to Acker June 29, 1894); Exhibit No. 15 (correspondence relative to sale of property); Exhibit No. 16 (letter from Simmons, architect); Exhibit No. 17 (copy of abstract); Exhibit No. 18 (original subdivision of square 939); Exhibit No. 19 (Walter's subdivision of square 939); Exhibit No. 20 (letter, Brad-

shaw, Sept. 25, 1893); Exhibit No. 21 (same, March 8, 1894); Exhibit No. 22 (same, September 21, 1893); Exhibit No. 23 (receipt from James T. Childs, October 27, 1897); Exhibit No. 24 (agreement as to taxes); Exhibit No. 25 (agreement as to insurance); Exhibit No. 26 (bid for loan); Exhibit No. 27 (certificate of satisfaction); Exhibit No. 28 (release of liens); Exhibit No. 29 (22 receipts in favor of A. Bradshaw), omit all except the following: (*a*) L. E. Carruthers, October 30th, (*b*) McIntire, October 21st; (*c*) Doherty, November 1st; (*d*) McIntire, November 23rd, (*e*) Childs, November 25th; and (*f*) Doherty, November 25, 1893; Exhibit No. 30 (receipt from Aughinbaugh); Exhibit No. 31 (application for a permit to build), omit extract from regulations printed on back of form of permit; Exhibit No. 32 (release by Arms and Drewry); Exhibit No. 33 (deed Hoagland to Morse); Exhibit No. 34 (deed Morse to Bradshaw); Exhibit No. 35 (certified copies of 19 papers or documents pertaining to ejectment suits) including the written memoranda in caption of 5, 10, and 14th papers being copies of docket in cases at law,
529 No. 32039; 32181 and 32182; Exhibit No. 36 (certificate of Commissioner of Patents as to record of James A. Ashley); Exhibit No. 37 omit all except the following:

"*Real Estate and Court Record.*

* * * * * * *

WASHINGTON, D. C., TUESDAY, *October* 31, 1893.

* * * * * * *

Recorded October 30.

Deeds.

* * * * * * *

Sq. 939—Hoagland, Lydia to Lita M. Morse $10. Sub-lots 40, 41, 42 and 48 to 53 inclusive.

* * * * * * *

Sq. 939—Morse—Lita M. to Aaron Bradshaw $10, sub-lots 48 to 53 inc.

* * * * * * *

Deeds of Trust.

* * * * * * *

Sq. 939—Bradshaw, Aaron *et ux.* to J. H. Kennard and Johnston Armstrong trustees to secure the New South Building and Loan Ass'n. Bond—$40,000. Sub-lots 48 to 53 inclusive.

* * * * * * *

Releases.

Sq. 939—Hoagland, Lydia from J. T. Arms and S. A. Drewry, trustees, Liber 1726, folio 303. Sub-lots 48 to 53 inclusive."

Exhibit No. 38 (certified copy of docket entries eq. 12318); Exhibit No. 39 (copy of bill of complaint equity 12318); Exhibit No. 40 (certified copy of testimony of Beardsley and Ashley in case at law No. 32181). Omit last 11 lines on page 1, all of pages 2 and 3 and first two lines on page 4, also last twenty-two lines on page 4 and first line on page 5; Exhibit 41 (certified copy of index to
530 ejectment suits in law docket 36).

14. Renewal motion for leave to amend, filed October 23, 1902.

15. Decree of court, January 27, 1903.

16. Opinion of court, as filed Feb. 5, 1903.

17. Appeal filed, February 16, 1903.

18. Memoranda from record to the effect that $200 was filed with leave of court in lieu of bond.

19. Citation with acceptance of service thereon.

GEORGE H. LAMAR;
BLAIR LEE,
Solicitors for Appellant.

Service of copy hereof accepted this 20th day of March, 1903.
J. J. DARLINGTON,
Solicitor for Appellees.

Order Extending Time to File Transcript.

Filed March 26, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Court Business.

JOHNSTON ARMSTRONG, Ancillary Receiver,
vs.
JAMES A. ASHLEY ET AL. } In Equity. No. 22257.

Upon consideration of the motion in behalf of the com-
531 plainant, appellant herein, and of the affidavit thereto attached, it is by the court ordered this 26th day of March, A. D. 1903, that the time reckoned from the date of the appeal heretofore entered and perfected in this court to the Court of Appeals in this cause, within which to produce and file with the clerk of the Court of Appeals a transcript of the record in this cause, be, and the same is hereby extended for the special and sufficient cause shown and that the complainant, appellant herein, have to the first day of May, 1903 within which to produce and file said transcript

of record, so that this cause may be ready for hearing during the April term, and that appellant shall assent to such hearing at that time.

A. B. HAGNER,
Asso. Justice.

732 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 531, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 22,257, equity, wherein Johnston Armstrong, ancillary receiver, is complainant, and James A. Ashley, *et al.*, are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28 day of April, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1313. Johnston Armstrong, ancillary receiver, &c., appellant, *vs.* James A. Ashley *et al.* Court of Appeals, District of Columbia. Filed Apr. 30, 1903. Robert Willett, clerk.

THURSDAY, *June 4th, A. D.* 1903.

No. 1313.

JOHNSTON ARMSTRONG, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant,

vs.

JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKINRIDGE, HENRY F. BEARDSLEY and JOSEPH R. BEARDSLEY, and EMMA B. JENKINS.

The above entitled cause was argued by Mr. George H. Lamar, attorney for the appellant, and was submitted to the consideration of the Court on the printed record and briefs filed herein by Mr. J. J. Darlington, attorney for the appellees.

No. 1313.

JOHNSTON ARMSTRONG, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant,

vs.

JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKINRIDGE, HENRY F. BEARDSLEY and JOSEPH R. BEARDSLEY, and EMMA B. JENKINS.

(*Opinion.*)

Mr. Justice MORRIS delivered the opinion of the Court:

This is a suit in equity instituted in the Supreme Court of the District of Columbia by the appellant here as complainant against the appellees as defendants to have an equitable lien declared against lands held and owned by the defendants for the value of certain improvements placed upon said lands with money of the building and loan association, claimed to have been advanced in good faith by it to the person who constructed the improvements and who appears to have claimed the lands adversely to the defendants. The proceeding is collateral to other litigation concerning the same lands which was heretofore before this court in the case of *Bradshaw v. Ashley*, 14 D. C. App. 485; and which was also taken to the Supreme Court of the United States, and is found reported in 180 U. S. 59, to which reports reference may be had for something of the history of the original controversy, of which the present is an outgrowth.

The lands in controversy are some lots in square No. 939 in this city, the original record title of which was in one George Walker, apparently a Scotch speculator, who, after his acquisition, seems to have abandoned them and to have returned to Europe. Subsequently the lots were sold for taxes, and a tax deed was given for them during the first half of the last century, and the title acquired under this deed, whatever it was, became vested in the present appellees, who and whose grantors seem to have exercised various

acts of ownership over the land and to have acquired an inchoate possessory title in it.

Besides this irregularity in the title, considerable confusion has arisen from the fact that upon the original plats of the city of Washington there are two sets of numbers attached to the lots in this square, one in ink and the other in lead pencil marks, which do not concur with each other, and of which the lead pencil marks would seem to have been the more correct. In the present proceeding, as well as in the former case, reference is frequntly had to this distinction, although it does not seem to have greatly, if at all, affected the merits of the present controversy.

Some time in the year 1889, 1890, or 1891—for the record is not very clear on the point, and it is of no importance to the determination of the present case—one Aaron Bradshaw, acting, as it is alleged, as the agent of one John H. Walter, who claimed to have acquired the record title of George Walker, although there seems never to have been any proof adduced of such acquisition, in a somewhat riotous manner took forcible possession of the lots in question, and proceeded to erect a small brick structure on the corner lot designated as "Ink Lot 1," or "Pencil Lot 4," whereby to continue to hold such possession.

Subsequently to this, in the months of September, October, and December of 1891, the Ashleys, by which general name we may, for the purpose of brevity of statement, designate the appellees or those of them and their ancestors who were then in interest—for there have been changes in interest by death and marriage—instituted four several suits in ejectment in the Supreme Court of the District, numbered on the docket of that court as Nos. 32,039, 32,040, 32,181, and 32,182, respectively, each to recover separate undivided interests in the lot designated as "Ink Lot No. 1." On March 6 and March 11, 1893, the declarations in all the causes were amended by the inclusion of other lots in the same square besides "Ink Lot 1;" and these other lots comprised the property involved in the cause now before us. There were several subsequent amendments, but it does not appear that they are material to the determination of this cause.

Subsequently, in December of 1895, three other suits in ejectment were instituted in the Supreme Court of the District by others of the Ashley heirs against Bradshaw for the recovery of undivided interests in the same property, and these suits were numbered on the docket as Nos. 39,040, 39,063, and 39,064, respectively.

All of these suits, except No. 32,181, appear to have been consolidated for trial in 1897; but no trial was then had, or for about four years afterwards. They seem to have been permitted to rest to await the result of No. 32,181, which was in the name of Nehemiah B. Ashley against Aaron Bradshaw, and which appears to have been selected and prosecuted as a test case. This was tried in June of 1897, and there was judgment rendered in it for the plaintiff, which was affirmed by this court on appeal (*Bradshaw v. Ashley*, 14 D. C. App. 485;) and subsequently also by the Supreme Court of the United States (*Bradshaw v. Ashley*, 180 U. S. 50). When the mandate of this court in that case went down, there was trial in all the

other consolidated cases resulting in verdict and judgment for the several plaintiffs, who were thereupon placed in possession of the property. The title of the appellees was thereby sustained, and that of Walter and Bradshaw shown to be invalid.

It appears further, that on March 1, 1890, previously to the institution of these several ejectment suits, the Ashleys had filed a bill in equity, No. 12,318, against Walter, Bradshaw, and others, wherein they alleged their claim of ownership of the property and sought to enjoin the defendants from setting up title thereto. But this suit was not diligently prosecuted, and for failure of prosecution it was dismissed on July 1, 1893.

On October 23, 1893, an agreement was consummated between Bradshaw, who had in the meantime acquired from Walter such title as the latter had, and a building association, known as the New South Building and Loan Association, of New Orleans, in the State of Louisiana, whereby this association agreed to advance to Bradshaw the sum of $20,000, to be secured by mortgage or deed of trust on the lots in question, which were then involved in the ejectment suits, and to be used for the construction of buildings on the lots. The deed of trust was then and there executed and recorded upon what is now assumed by the appellant to have been a sufficient investigation of the title, and the money was advanced to Bradshaw by the association from time to time as required by the work of construction, in five several instalments, the last of which was paid in April of 1894.

At the time of this arrangement between Bradshaw and the building association the latter had several stockholders in this District, including Walter; and it had a local board here composed of such stockholders, whereof Walter was president, and whose duty it was to pass upon all local applications for loans before they were sent to the general officers or the general board in New Orleans. It had also a local attorney, one Aughinbaugh, whose duty it was to pass *prima facie* upon the title of any property upon which it was sought to procure a loan. Loans could only be made to stockholders, and Bradshaw became a stockholder for the purpose of procuring the loan. A "chain of title," as it is called, or statement of deeds on record purporting to affect the property in question, was made or procured by Aughinbaugh, and accepted by the local board and by the officers of the association in New Orleans, notwithstanding that on the face of it it was so grossly defective as to show no title whatever in Walter or Bradshaw. While it purported to show all conveyances of the so-called record title, it derived the title of Walter and Bradshaw from some persons claiming to be heirs of one Ralph Walker, between whom and George Walker, the original owner, no connection whatever was shown. This chain of title, which omitted, and, as it would appear, purposely omitted, the tax deed and other deeds, if any there were, under which the Ashleys claimed, was afterwards continued by other examiners of title; but none of these seem to have in any manner revised the statement given by Aughinbaugh. Mention was made in an accompanying letter or certificate by Aughinbaugh of the equity suit No. 12, 318, which had been dismissed;

but no mention was made of the pending ejectment suits. In fact, it would seem that they had been studiously omitted.

In a short time after procuring the loan Bradshaw defaulted in the payments which he was to make upon the stock held by him, which was according to the usual mode of repayment of such loans to building associations. This was in 1894, and some steps were taken by the association to foreclose under the deed of trust. But this purpose was abandoned in consequence of an arrangement which had been made by its local attorney at the time and Bradshaw, whereby the latter executed a power of attorney by which he turned over the property to the attorney to manage it and collect the rents and pay such rents over to the association; and Bradshaw and the association were to join their forces to defend and defeat the ejectment suits. It does not appear that the association received anything from the rents, and, as already stated, the ejectment suits resulted disastrously to Bradshaw and his claims, and necessarily also to the mortgage held by the association, and to any further collection of rents by its attorney.

In the meantime, in the year 1899, embarrassed by this and other unfortunate and ill-advised loans which it had made, the affairs of the association were placed in the hands of a receiver, and the appellant, Johnston Armstrong, who had been its attorney in New Orleans, was appointed receiver. Armstrong also received an ancillary appointment as receiver in this District by a decree of the Supreme Court of the District in proceedings instituted for the purpose. Thereupon he instituted the present proceedings by filing his bill in equity.

In and by this bill, wherein the action of Bradshaw, Walter, and Aughinbaugh is denounced as a gross fraud intended by them to defraud the association of its money, it is sought to charge the land in the hands of the Ashleys with an equitable lien in favor of the association, on the ground that the Ashleys had notice constructively by the record of the mortgage from Bradshaw to the association that it was the money of the association that was used in the construction of the buildings, and failed to notify the association of their title or to warn the association in any manner against the fraud that was being perpetrated upon it. The defendants in their answer denied any personal knowledge of the transactions of the association with Bradshaw, or with Bradshaw, Walter, and others, and of the fraud alleged to have been perpetrated by these upon the association; and denied that they had any knowledge, personal or constructive, of the source whence Bradshaw derived the money which he used in the construction of the buildings, until February, 1895, when the attorneys of the association at that time notified them of the fact, and the defendants promptly offered to sell to the association the lots covered by the buildings at their market value at the time without reference to the buildings, a proposition which was not accepted by the association. They aver that the association preferred to contest the ejectment suits than to accept such offer. And they aver, also, that, instead of standing idly by, when someone commenced

making the excavations for the buildings, they promptly notified such persons that he would be held as a trespasser.

After replication filed, and again at the hearing, it was sought to amend the bill by introducing an allegation to the effect that there was kept in the office of the clerk of the Supreme Court of the District, for the convenience of examiners of title, an index book of reference showing the ejectment suits entered and the property which they affected; and that, while this index book contained entries of the ejectment suits hereinbefore mentioned and of lot 1, in square 939, as being claimed in them, yet, when the declarations were amended, the clerk failed to add to lot 1 the other lots which were included in the amendment, and the index book failed to show said lots when its examiners subsequent to Aughinbaugh examined them. This amendment does not seem to have been formally allowed by the court; but the court appears to have considered it as though it had been allowed.

In connection with the subject-matter of this amendment it appears in the testimony that in the ordinary docket which the clerk of the court keeps of all suits entered, and of the proceedings therein, there is entered at the head of the page devoted to each case the number of the case on the docket, the names of the parties, plaintiff and defendant, the nature of the action and property sued for, and the names of the attorneys for the plaintiff and defendant, respectively; that in these Ashley-Bradshaw ejectment suits, lot 1, in square 939, was entered as the property sued for, but that there was no mention here of the additional property when the other lots were included in the amended declarations afterwards filed.

It is sought to make the Ashleys responsible for these alleged failures of the clerk of the court to make these additions to the docket and the index book, as it is claimed that they tended to mislead the association to its detriment. It is nowhere alleged, however, that the association or those who examined the records for it were so mislead, and there is no proof of such misleading.

Voluminous testimony, much of it unnecessary and irrelevant, was taken in the case. Upon consideration of it and of the pleadings the court held that the complainant had made no case for relief, and accordingly dismissed the bill. From the decree of dismissal the complainant has appealed to this court.

In disposing of this case we might well, perhaps, adopt the excellent opinion filed in it by the learned justice who heard it in the court below. That opinion is thorough and elaborate, and satisfactorily disposes of all the questions raised by the record. It will be proper, however, to notice some of those questions, and to state in our own way our views of the law which we think governs them.

In the case of *Anderson v. Reid*, 14 D. C. App. 54, we held, after a full and careful review of all the authorities on the subject, that an occupant of land, who has entered upon it in the honest belief that it is his own and who has in good faith improved it, is not entitled, after having been evicted by the true and lawful owner, to claim an equitable lien for his improvements against such true and lawful owner. And if an occupant, who improves in good faith,

is not entitled to such equitable lien, it is difficult to see how one who supplies him with money for the construction of the improvements can stand in any better position than he does. Fortunately, as we think, and in the interest of equity and justice, the rule stated in the case of *Anderson v. Reid* has now, at least to some extent, been modified by the Code, in section 1003, of which something like the more equitable provision of the Roman Civil Law is introduced into our jurisprudence. But the present suit is not affected by this provision of the Code.

If an occupant in good faith was not entitled to an equitable lien for improvements, one acting in bad faith certainly is not so entitled; and it must be conceded, of course, that in the present instance Bradshaw was an occupant in bad faith with the fullest possible notice of the right and claim of the appellees. Nor can it be supposed that the grantee of an occupant in bad faith can have any better right than his grantor had.

The contention on behalf of the appellant, however, is that, because Bradshaw was in bad faith, and the appellees knew it and yet failed to notify the appellant or rather the association in whose place the appellant now stands, therefore, they are responsible in this suit. But it is difficult for us to see wherein there was any legal duty imposed upon the appellees to warn the association against the consequences of its own improvident and inconsiderate action and the fraud perpetrated upon it by its own agents. The appellees aver that they had no actual knowledge of the association, or of the source from which Bradshaw derived the money for the improvements, until a year after that money had been advanced to Bradshaw and the improvements had been constructed; and this statement is not controverted. Indeed, actual knowledge of this fact, or of the connection of the association with the land in any manner, is not claimed on behalf of the appellant. The claim is that the appellees had constructive notice from the record of the mortgage or deed of trust given by Bradshaw to the association, and therefore that it was the duty of the appellees to seek out the association and to warn it that Bradshaw's title was not good, and that they themselves had the title to the land.

This we must regard as a most extraordinary contention, and an unreasonable application of the doctrine of constructive notice. Constructive notice does not mean anything of this kind. One is not required to take notice of everything which is put upon the records of the land office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or by his procurement, can legally affect those rights. One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it; but it would be absurd to hold that he is required to take notice of any and all documents that might be placed upon record afterwards by irresponsible persons with whom he has no connection.

Nor is the contention entitled to any greater consideration that the appellees in some way became liable to the association because

the clerk of the court failed to make a certain index or a certain marginal memorandum as full as it might have been made. The appellees were not responsible for the manner in which the clerk kept that index. They had no control over it. Nor does it appear even to have been a record required by law to be kept by the clerk. The marginal memorandum at the head of the pages of the docket which contained the entries of their several suits were equally beyond their control. They or their attorney had accomplished all that was required of them when they delivered their papers to the clerk, and those papers were filed and a memorandum of the filing was entered by the clerk in the docket. The marginal references were matters wholly extraneous, and competent examiners of title could scarcely be content to rely upon them without examination of the papers filed.

It is true that it has been held that, when a document such as a deed is required to be recorded, and the record in law takes the place of the original document, and the recorder fails to transcribe the document correctly, so that one who afterwards deals with the property is mislead by the recitals in the record, the parties in interest are bound by the record rather than by the original deed (Frost *v.* Beekman, 1 John Ch. 288). But no such case is presented here. There is no record of a declaration or amended declaration other than its filing. The original paper itself becomes the record and speaks for itself; and he who would accurately know its contents must have recourse to the document itself, and not rely upon any marginal note.

We are unable to find any ground in the record to justify the intervention of a court of equity in favor of the appellant. The association, for which he sues, appears to have been the victim of its own improvidence and of gross fraud perpetrated upon it by its own agents and those with whom it dealt, without connivance, concurrence, or knowledge of any kind on the part of the appellees, whose conduct throughout appears to have been fair and reasonable, and whose pending ejectment suits gave the fullest possible notice to all the world of their claims in the premises.

We are of opinion that the decree of the Supreme Court of the District of Columbia should be affirmed, with costs. And it is so ordered.

Affirmed.

THURSDAY, *June 25th, A. D.* 1903.

No. 1313. April Term, 1903.

JOHNSTON ARMSTRONG, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant,
vs.
JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKINRIDGE, HENRY F. BEARDSLEY and JOSEPH R. BEARDSLEY, and EMMA B. JENKINS.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

June 25, 1903.

TUESDAY, *May 23rd, A. D.* 1905.

No. 1313.

JOHNSTON ARMSTRONG, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant,
vs.
JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKINRIDGE, HENRY F. BEARDSLEY and JOSEPH R. BEARDSLEY, and EMMA B. JENKINS.

On motion of Mr. G. H. Lamar, of counsel for the appellant in the above entitled cause, it is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

Bond on Appeal.

Know all Men by these Presents, That we, Johnston Armstrong, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, as principal, and the United States Fidelity and Guaranty Company, a corporation of the State of Maryand, as surety, are held and firmly bound unto James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley, Joseph R. Beardsley and Emma B. Jenkins in the full and just sum of Three hundred ($300) dollars, to be paid to the said James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckin-

ridge, Henry F. Beardsley, Joseph R. Beardsley and Emma B. Jenkins, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, joints and severally, by these presents.

Sealed with our seals and dated this 17th day of June, in the year of our Lord one thousand nine hundred and *and* five.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court between said Johnston Armstrong, Ancillary Receiver of the New South Building and Loan Association of New Orleans, Louisiana, and the said James A. Ashley, *et al.* a decree was rendered against the said Johnston Armstrong, Ancillary Receiver etc. affirming the decree of the Supreme Court of the District of Columbia against said complainant and the said Johnston Armstrong, Ancillary Receiver of the New South Building and Loan Association of New Orleans, Louisiana having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley, Joseph R. Beardsley and Emma B. Jenkins citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Johnston Armstrong, Ancillary Receiver of the New South Building and Loan Association of New Orleans, Louisiana shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHNSTON ARMSTRONG, [SEAL.]
Ancillary Receiver of the New South Building and Loan Association of New Orleans, Louisiana.
By GEORGE H. LAMAR, [SEAL.]
His Attorney.
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
By J. S. SWORMSTEDT, [SEAL.]
Attorney in Fact.

(Seal of the United States Fidelity & Guaranty Co.)

Sealed and delivered in presence of—
JENNIE M. HARVEY.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1313. Johnston Armstrong, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant *vs.* James A. Ashley, *et al.* Bond on Appeal to Supreme Court of the United States. Court of Appeals District of Columbia. Filed Jun- 20, 1905. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley and Joseph R. Beardsley, and Emma B. Jenkins, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Johnston Armstrong, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 20th day of June, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 20th day of June, A. D. 1905.

J. J. DARLINGTON.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun- 20, 1905. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 302, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Johnston Armstrong, Ancillary Receiver for the New South Building and Loan Association of New Orleans, Louisiana, Appellant, *vs.* James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley and Joseph R. Beardsley, and Emma B. Jenkins, No. 1313, April Term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 20th day of June A. D. 1905.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Endorsed on cover: File No. 19,916. District of Columbia Court of Appeals. Term No. 122. Johnston Armstrong, ancillary receiver for the New South Building and Loan Association of New Orleans, Louisiana, appellant, *vs.* James A. Ashley, Mary M. Ashley, Hayden H. Ashley, *et al.* Filed October 2d, 1905. File No. 19,916.

FILE COPY.

FILED.
NOV 30 1906
JAMES H. McKENNE
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 122.

JOHNSTON ARMSTRONG, ANCILLARY RECEIVER FOR THE NEW SOUTH BUILDING AND LOAN ASSOCIATION OF NEW ORLEANS, LOUISIANA, APPELLANT,

vs.

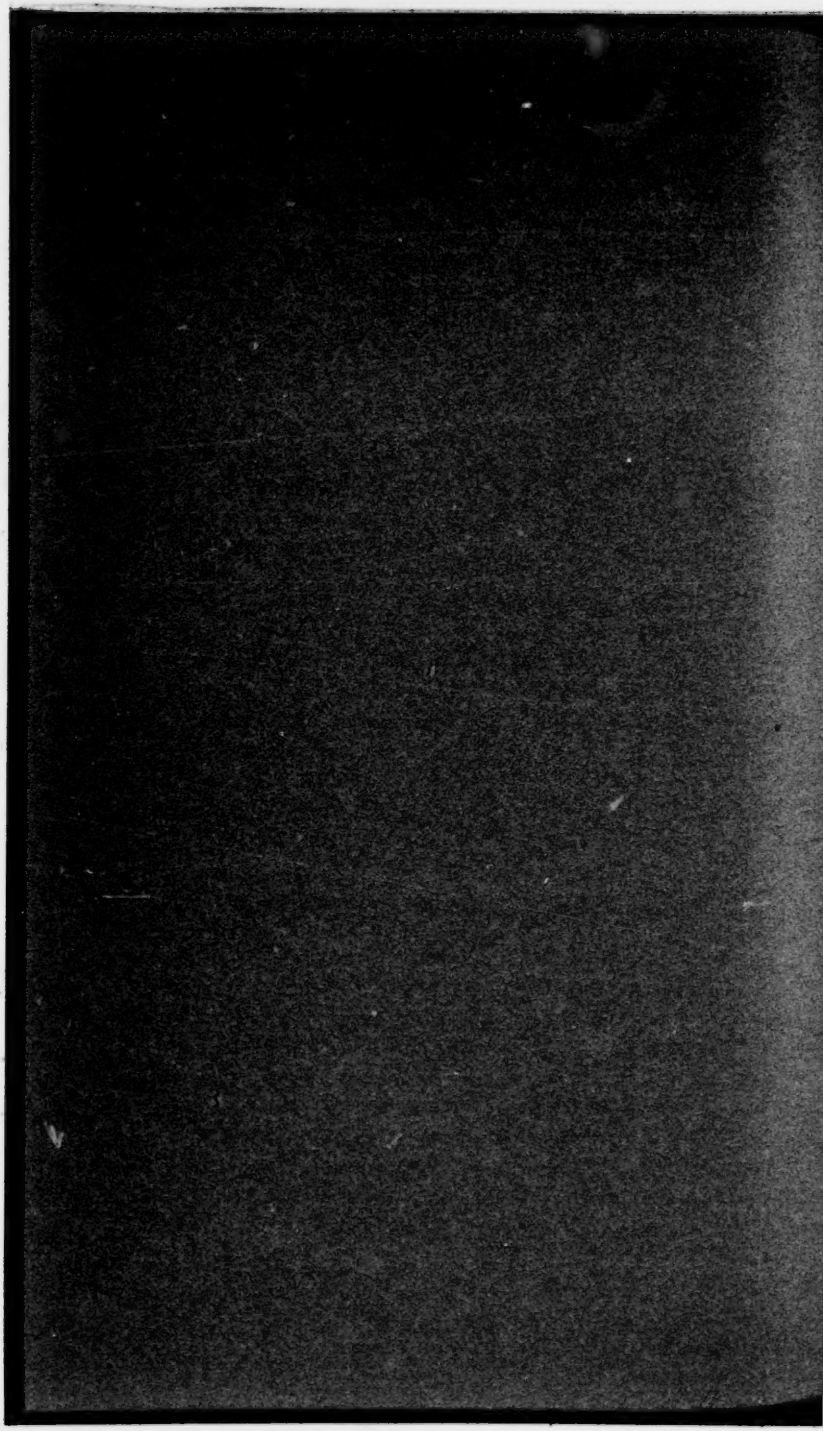
JAMES A. ASHLEY, MARY M. ASHLEY, HAYDEN H. ASHLEY, RALPH B. ASHLEY, MARY A. BRECKENRIDGE, HENRY F. BEARDSLEY, JOSEPH R. BEARDSLEY, AND EMMA B. JUNKINS, APPELLEES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF OF COUNSEL FOR APPELLANT.

BLAIR LEE,
GEORGE H. LAMAR,
Solicitors for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23835



SUPREME COURT OF THE UNITED STATES.

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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF OF COUNSEL FOR APPELLANT.

This case stands upon appeal from a decree entered in the Court of Appeals of the District of Columbia, June 25, 1903 (Printed Record, 301), affirming with costs the decree of the Supreme Court of the District of Columbia, entered January 27, 1903 (R., * p. 513), dismissing the bill of complaint.

The references in this brief are to pages of the record from the court below, which constitute the star pages in the record as printed in this court, unless otherwise stated.

The bill (R., 1) was filed May 1, 1901, under authority (R., 17) and by order of court (R., 21), for the purpose of having an equitable lien declared against certain real estate situated in square 939 of the city of Washington, to the extent of the value of the improvements erected thereon, for the appointment of a trustee to sell the same for the purpose of discharging the lien, and for general relief.

The bill of complaint avers that The New South Building and Loan Association of New Orleans, Louisiana, was in 1893 and 1894 conducting a national building and loan association business, with its home office and directors located in New Orleans, Louisiana; that, after the exercise of due and customary precautions more particularly set forth, including the making of diligent inquiry as to the condition of the title of said real estate and the value thereof, it, in good faith and without notice of any adverse claim to the property, granted a builders' loan, on the building-association plan, of twenty thousand dollars ($20,000.00) unto one Aaron Bradshaw, of Washington, D. C., and that, before any advancement was made thereon, a deed of trust on said real estate to secure the same was duly executed by said Bradshaw and wife in favor of John Henson Kennard and Johnston Armstrong, trustees, under date of October 28, 1893, which was recorded among the land records of the District of Columbia on October 30, 1893; that thereafter, as the construction of these six dwelling-houses on the property progressed, the full amount of the loan was slowly advanced through a period of over five months from the time of recording the deed of trust, in five installments, the first being for $4,000.00, paid about November 29, 1893, and the last of $7,000.00, paid after the buildings were completed, on April 12, 1894.

That after the completion of the houses on said property and the advancement, in good faith, of twenty thousand dollars ($20,000.00), by means of which the improvements were wholly erected, default having been made in the pay-

ments required, it was discovered by the association that there was existing at the date of the execution of the trust and at the time of the making of the advances a controversy between certain of the appellees or their ancestors and said Bradshaw over the title to the property, and that there was then pending ejectment suits involving an undivided four-fifths interest in the property.

In the bill it is averred in detail how the existence of this litigation was fraudulently withheld by said Bradshaw, John H. Walter, president of the local board in Washington, D. C., and W. E. Aughinbaugh, the local attorney chosen by the said local board, who made the first examination and favorable report on the title some months before the loan was actually granted, making no reference to the then pending ejectment. The bill sets forth in detail the national building association plan of making loans only to stockholders, through local boards, and avers that the members of the local board, in contemplation of law, were not agents of the corporation association.

It is further averred that the association had no reason to distrust at any time the members of the local board or the said Bradshaw, or the fidelity of the said Aughinbaugh, but was led to believe that he was an attorney in good standing and a member of the bar of the Supreme Court of the District of Columbia.

By amendment to the bill of complaint (R., 50 and 510), it is further averred that the ejectment suits pending at the time said first report on title, as originally filed, did not include the land in controversy, which first became involved in the litigation by amendments to the declarations, made in March, 1893, and that the court docket was defective, in that it did not show that the property involved herein was affected by ejectment suits; that if the docket had been posted in the proper and customary manner in this regard the pendency of said suits would have been discovered and reported in the continuation of title to said property, made by

the District Title Insurance Company from the 1st day of June to the 23d day of September, 1893; also by the examination and continuation of title made for said association by Walter H. Acker, an attorney of the District of Columbia and successor to the said W. E. Aughinbaugh as attorney for said local board, in the preparation of which continuation said Acker made a personal examination of the records from the 26th day of May to and including the 1st day of November, 1893, in which examination said Acker had occasion to and did carefully examine all entries as to lots in square 939 then appearing in the two volumes kept by the clerk of the Supreme Court of the District of Columbia, purporting to contain a complete (numerical) index to all pending ejectment suits, which said indexes were universally used by those examining or making continuations of title; that the plaintiffs in said ejectment suits, well knowing the fact that said Bradshaw was capable of practicing the very character of fraud perpetrated in this instance, and that the lawyers would rely on said general indexes for reference to any pending ejectment suits, nevertheless utterly failed and neglected to advise and have the clerk of said court make the necessary entries on the said general indexes of ejectment suits when the property involved was brought into them by amendment.

In the bill of complaint it is further averred that immediately after the recording of said deed of trust there was commenced the erection on the land of six two-story, six-room, modern brick and stone dwelling-houses, respectively numbered 215 to 225 9th street N. E., which in the course of time were completed at a cost to the association of twenty thousand dollars ($20,000.00), the expense thereof being paid by the association in accordance with the well-known building-association plan, as the buildings severally progressed and pursuant to the provisions of the bond and the deed of trust given to secure the same; that said Bradshaw is hopelessly insolvent, and that said Aughinbaugh has disappeared,

and that said Walter, at the time of the transaction especially, was then regarded as of high standing and responsibility.

It is further averred that the erection of said buildings by and with the money of the association, and each stage in the progress thereof, was within the personal knowledge of defendant James A. Ashley, representing himself as well as Nehemiah B. Ashley, and defendants Mary E. Breckenridge and the Beardsleys, and, well knowing, as did each of them, that said association would not have made such advances had it been cognizant of the condition of the title, or the suits pending with respect thereto, as then known to said defendants and as concealed from the association as aforesaid at the time of the transaction and during the whole period involved in the making of the payments and completion of buildings, forming, as they did, a conspicuous and substantial and valuable improvement to the land; that no notice whatsoever from said parties whose property was being so benefited or any of the defendants was given to the association, notwithstanding their information from the public record of the contents of the deed of trust, the domicile and officers of the association, and the further well-known plan of payment of such advances by all building associations during and never wholly until completion of buildings being erected; that the defendants had record notice that the association was located in the city of New Orleans through said deed of trust, and knew that the loan and advances would and could not have been made in its behalf save through the fraud and deceit of some party interested in securing the loan, and that the defendants should in good conscience and equity have given notice to the association as to the state of the title and claims of defendants with respect thereto, but that nevertheless they stood by and permitted said expenditures to be deliberately made, to the great loss and injury of the association, and they are estopped and cannot now deny that the complainant, in behalf of the association, has an equitable lien, as its receiver, on the land

and premises described to the extent of the value of the improvements placed thereon.

That the value of the improvements when made far exceeded the value of the land upon which the same were placed; that so great an expenditure under the circumstances of the defendants' pending suits was notice to any fair-minded person, having knowledge of such suits and the claims they represented, that the expenditure was of necessity being made as a result of fraud or deceit and threw a burden in equity and good conscience on the claimants to the land, whom the complainant avers on information and belief knew that said expenditure was being made, and it was their duty to have either addressed to the association a warning or else be estopped in equity from taking the benefit of the expenditure without just compensation; that by standing by and permitting the improvements to be made under such unusual circumstances they took the chance of such improvements having been brought about by fraud and deceit and are now estopped in equity and good conscience to assert their legal title without compensation for such improvement; that their silence in the face of these great expenditures was misleading and calculated to and did aid and abet fraud and deceit being practiced on the association and calculated further to bring about the improvements on the land which the defendant then claimed to own or did own as stated.

That, irrespective of said estoppel and irrespective of the claimants having stood by with knowledge, as aforesaid, and permitted the improvements to be made, having investigated the title with diligence and having entered upon the transaction and loan in good faith, under the belief that the title therein for the security of the loan was a good title, and having no notice of any defect in the title, and being without knowledge of the adverse claim of the claimants and without notice from them or any of them of any right or claim whatever thereto, complainant has a right to an equi-

table lien declared upon the premises for the protection or remuneration of the association to the extent of the improvements placed thereon.

The bill prays for the declaration of such lien, for the appointment of trustee to sell the property and pay the complainant his proportionate share of the proceeds of the sale, and for general relief.

All the defendants, now appellees, save one, Joseph R. Beardsley, joined in an answer (R., 31), in which they admitted the formal allegations of the bill, the execution of the trust, and averred that Bradshaw had no valid title to the ground; that they had no knowledge concerning the advances alleged to have been made under the deed of trust nor of the default thereunder. They admit the pendency of ejectment suits to recover lots designated 1, 2, 3, and 20, in square 935, and aver that the same are otherwise sometimes known as lots 3, 4, 5, and 6 of the same square; that said suits had been pending for several years and were matters of public record prior to the deed of trust and advances made; that they have since been determined in favor of the appellees, who are now and for some time past have been in actual occupation and enjoyment of the property under the judgments in said action.

They aver, more in detail, that said Walter was a speculator in real-estate titles in the District of Columbia, and that, pursuant to this business, about the year 1889, he obtained deeds from persons claiming to be the heirs of one George Walker, conveying two entire squares, including the land involved herein, and a very large number of original lots in other squares in the city of Washington, to said Walter; that said Walter made a pretended subdivision of the lots and conveyed the same to said Bradshaw or to his wife, and said Bradshaw took violent, forcible possession thereof, the said property being then vacant and unimproved, by erecting at the southwest corner of the square (on a lot not involved herein) a small brick edifice, built in two days, and protected while in

the course of construction by a number of colored men armed with sticks and stones, employed by said Bradshaw for that purpose, the remainder of the property being contemporaneously inclosed by a fence; whereupon four ejectment suits were instituted, including one by Henry F. Beardsley, to recover possession of the same; that pending these suits "the said Walter or the said Bradshaw, or both of them, proceeded to erect thereon the improvements described in the bill, *obtaining for the purpose, and upon the security of the deed of trust to Kennard and Armstrong above referred to, certain advances from the said The New South Building and Loan Association,* as these defendants were informed subsequent to the completion of the said houses, but not prior thereto."

The defendants further aver that the association was bound to take notice of said suits, and that "any examination of the land records would have disclosed the fact that the title of George Walker had been made the subject of tax deeds for very many years prior to said deed of trust."

They aver affirmatively that they had no knowledge whatsoever of the frauds practiced upon the association and were wholly free from any participation therein or connection therewith. They do not deny the allegations of the original bill, to the effect that they had personal knowledge of the erection of the buildings from the beginning to their conclusion; they aver that on January 4, 1894, after they had learned of Bradshaw's "connection with the buildings," they notified one Childs in person he would be held liable as trespasser, etc., a copy of which alleged notice is attached to the answer as a part thereof; said alleged notice purports to have been signed (R., 43) by appellee James A. Ashley in his own right and as attorney-in-fact for Nehemiah B. Ashley, father of appellees Mary M., Hayden H., and Ralph B. Ashley and Emma B. Junkins, and appellee Mary A. Breckenridge and as next friend for appellee Joseph R. Beardsley. The alleged notice states that said Childs is represented to them as contractor and builder of certain houses, etc., and

he is advised that "if such is the fact he or his agents will be held as trespassers," and that "they will not be responsible for any liabilities contracted by the Mr. Bradshaw."

The answer further avers that it was not until about the month of February, 1895, that the Ashleys learned the details of the advances having been made by the association under the deed of trust, etc.

The answer further affirmatively avers a certain alleged offer of sale by appellees of their interests in the property to the association on the basis of prices *asked* for neighboring unimproved property and alleging the offer to have been made by reason of "the peculiar circumstances of the case" (said averment as to such alleged offer was not supported by proof); that the association employed counsel and united its efforts with those of Bradshaw and Walter to defeat the defendants, protracting the litigation until April, 1901, and until after the decision of the Supreme Court of the United States rendered further efforts impracticable, subjecting defendants to costs, etc., "and to losses in the depreciation in market value pending the said litigation in the aggregate materially exceeding the present actual value of the improvements," as they believe; they aver "that it was no part of their business to guard the interest of the building association," even had they been aware of the facts with respect to all of the frauds alleged in the bill. They aver record notice to the complainants and deny any such notice to themselves, or that they "are estopped to deny the claim of the said association that it has an equitable lien, or any lien," for the advances made, and aver their silence did not create any equity against them. They deny knowledge of the exact amount expended in the erection of the buildings and improvements and aver that the same are not now worth the sum of $20,000 or any sum approximating that amount.

The separate answer of Joseph R. Beardsley adopts the answers of the other appellees as his answer. He avers that he is a mere reversioner as to the property in controversy,

after the life estate of his father, appellee Henry Beardsley, and that he has never at any time had any agent in respect to said property, nor any earlier nor better knowledge of the advances made than was possessed by his codefendants, as shown by their answer.

To these answers general replications were filed (R., 49).

The documentary evidence and oral testimony adduced on behalf of the appellant, hereinafter more fully discussed, though voluminous, was clear and convincing and comports with the allegations of the bill. A certified copy of the docket entries in the ejectment action of Henry F. Beardsley (R., 415) shows that the same was filed December 9, 1895, and was therefore not pending at the date of the deed of trust, as averred in the joint answer.

It appears from the testimony that at the time the loan was granted there stood in the name of Aaron Bradshaw what was then regarded, both by the Columbia Title Insurance Company (R., 169 and 174) and the Real Estate Title Insurance Company (R., 319 to 326 and 365) of the District of Columbia, the proprietary title to the property, which property was in the actual possession of Bradshaw, and that in the opinion of the Real Estate Title Insurance Company the outstanding tax titles under which the appellees claimed were void (R., 365 and 159 and 160).

It was further shown that no actual knowledge of the possession of the appellees prior to Bradshaw's possession was ever acquired by any officer or agent of the association not involved in the fraud.

It was further shown that there was gross fraud perpetrated on the association by members of its local board, in which W. E. Aughinbaugh, the local attorney, participated, it being shown that he received from Bradshaw, the fraudulent grantor, for his examination and report on the title, $250 (R., 382), about eight times the amount ordinarily charged by title companies here at the time for similar reports, and that in his report approving the title and de-

claring it good he made no mention of the pendency of ejectment suits (R., 327 and 328); that after Aughinbaugh ceased to be the attorney for the local board and before the loan was granted by the home office, the matter of the title was referred to Mr. Walter H. Acker, a reputable member of the bar of the District of Columbia, who succeeded Aughinbaugh as local attorney (R., 315 and 313), having in his hands Aughinbaugh's report upon the title (R., 327 and 328), a chain of title signed by Mr. Ashford, president of the Real Estate Title Insurance Company, an examiner of high repute (R., 319 *et seq.*); a continuation of title signed by Eugene Carusi, president of the District Title Insurance Company (R., 329), and a copy of a certificate of title (R., 365), which had been issued by the Real Estate Title Insurance Company on the order of John H. Walter (R., 156), covering the property in question and dated September 16, 1892, in which certificate Mr. Ashford, president of that company, pronounced the proprietary title good, the outstanding tax titles void, and the then pending equity suit, dismissed for failure to prosecute before this loan was granted, as not well founded (R., 159 and 160 and 365).

With these papers in his possession, Mr. Acker accepted as correct the report of Aughinbaugh to its date, and Mr. Acker continued the Aughinbaugh report, making an abstract of all changes in the title to and including the date of recording the trust which conveyed the property for the security of the association.

In making his continuation Mr. Acker testifies that he had recourse (R., 204) to the general indexes of ejectment actions, compiled and kept open by the clerk of the Supreme Court of the District of Columbia for the use of attorneys and the public and used and relied on by the clerk in giving information as to such cases. This general index was in the form of a numerical index, giving under each square all lots involved in ejectment suits then or previously pending. In this manner Mr. Acker covered the ground in respect to

ejectment suits, as shown on this general index, from the beginning (R., 393), and but for the inaccuracy, shown in detail by the testimony, in the docket from which the general index was accurately compiled, he would have discovered the existence of the pending ejectment suits. The property involved in this suit was brought into the ejectment cases by way of amendments, filed in March, 1893, to proceedings filed in 1891; these amendments, thus bringing the property in this suit into old ejectment suits, were not noted upon the face of the docket (copy of face of docket in the three suits, R., 398, 407, and 412) so far as to show that new land had been brought into the suits, and the face of the docket, purporting to give all of the land involved in the ejectment suits, thus failed to show that the land in this cause was involved. Each docket has a special numerical index, bound in the same volume, purporting to give the land in ejectment suits, and the same omission was made in respect to the special docket index (R., 435) from which, and from the face of the docket as well, the general index, which was examined by Mr. Acker, had been correctly compiled.

Mr. Acker forwarded to the home office at New Orleans all of the original papers turned over to him, including the Aughinbaugh report, with his continuation, and including a final certificate signed by him as "attorney and abstractor," dated November 1, 1893, in which he, among other things, said:

"I hereby certify that I have carefully examined the public records of the District of Columbia from May 26, '93 to November 1, '93, and find that the mortgages before mentioned, and all other liens and encumbrances named in W. E. Aughinbaugh's first certificate, or that have since been created, have been satisfied and discharged of record, that all bonds or notes secured by said loans or encumbrances, have been canceled and surrendered; * * * that *there are no proceedings commenced in the State or United States courts which affect this land;* * * * and that in my opinion, the title is good and valid in fee simple in Aaron

Bradshaw, * * * subject only to the trust deed of the New South Building and Loan Association of New Orleans, Louisiana, which is described in the abstract to which this certificate is attached." (Italics ours.)

It was shown by the testimony of the president and general counsel of the company that the application for the loan was finally passed (R., 104) upon the strength of this certificate; it was shown by the testimony of the assistant general counsel for the association, who drew the checks, that the general board of directors, under whose authority the loan was granted, was without knowledge of any defect in the title whatsoever (R., 128), and both of these general officers testified that the matter was investigated and the loan made in good faith.

Mr. Acker visited the buildings at each stage of construction that called for a payment before turning the money over, and found Bradshaw in possession, and he states that the structures appeared to correspond to the contract and as certified to by the architect. He was not notified from any source of an adverse claim upon the site of the buildings until after the last payment was made.

No evidence was introduced in support of the averments by the defendants in their answer with respect to the alleged notice to Childs, the bricklayer, or the alleged negotiations for compromise. It was stipulated of record (R., 159) that Joseph R. Beardsley was born March 27, 1875, which made him under twenty-one years of age at the time of the alleged offer to sell. There is no denial by the appellees of knowledge of the fact that the buildings were being erected from the very beginning of the work thereon until their completion, and no attempt is made to explain why the defendants did not inquire into the facts with respect to the source from which funds were derived with which the buildings were constructed. The evidence, as well as the answer of the defendants, also shows that at the date of the trust and the erection of the improvements Bradshaw and Walter were known to

and regarded by the appellees as designing and irresponsible characters (R., 235-236). There is no evidence adduced as to what was learned by Mr. James A. Ashley from said Childs when he, as alleged, delivered in person the so-called notice to him, nor is any explanation given why appellees contented themselves with this one alleged notice to a bricklayer. James A. Ashley, the attorney-in-fact and next friend of the owners, according to the alleged notice itself, an attorney practicing before the Patent Office (R., 12), residing near the land in question (R., 129-138), was not placed on the stand. There was an utter failure on the part of the defendants to explain or attempt to explain their attitude, save and except as contained in the answer referred to, namely, that there was no obligation on their part, notwithstanding fraud, to make inquiries with respect to who was making the advances or to give notice to the association of their claim of title.

The testimony adduced on the part of appellees, as defendants below, related principally to the value of the land and improvements and costs claimed to have accrued in connection with the trial of the ejectment suits and the mode of compilation in the office of the clerk of the index to the ejectment suits. It was admitted by Henry F. Beardsley (R., 259-260) that the land embraced in the ejectment suits not affected by the improvements was greater in area and value than the lots occupied by the six houses and described in the trust. It was also admitted by Mr. Beardsley (R., 264) that at the trial in ejectment objection was raised on the part of the plaintiffs in ejectment, appellees herein, to the submission of any testimony showing the existence of the loan of the association or the improvements made.

From the testimony on both sides it is clearly shown by a preponderance of evidence that this phase of the matter, as far as possible, was kept from the jury and the defense to the ejectment suits was made in behalf and in the name of Aaron Bradshaw, defendant thereto; that John F. Walter

was vitally concerned in the outcome of the suits, so much so that in case of compromise between the building association and the appellees the latter fully expected to have to continue to contend against both Walter and Bradshaw (R., 18 and 24); that, save and except the retainer fee of $250 paid by the association to Mr. William F. Mattingly as special counsel for the association (R., 34), the means of the association itself was not used in the ejectment litigation. By a power of attorney (R., 191) dated September 18 and *recorded* October 1, 1894, among the land records of the District of Columbia, Bradshaw and wife empowered Walter H. Acker to take charge of the buildings, collect the rents therefrom and expend them, first, in the defense of the title of Bradshaw to the land, and, second, to turn over the balance thereof to the association to be applied on his obligations to it. The undisputed testimony is (R., 34) that of the rents so received by Acker at the time of the institution of this suit and taking testimony herein no part had been received by the association or its receivers. The proof submitted in support of the germane allegations of the bill and the amendment offered thereto will be hereinafter more fully discussed under appropriate subdivisions.

The case was heard in the Supreme Court of the District of Columbia, which passed a decree (R., 513) dismissing the bill for reasons more particularly set forth in the opinion of the court (R., 513), rendered by Mr. Justice Hagner, in which opinion it appears that the court considered the amendment to the bill of complaint and the matters involved therein.

In this opinion it was, among other things, held:

"That the courts will not interfere to grant active relief to a *bona fide* purchaser, who, without notice of the true state of the title, has made permanent ameliorations and improvements, if he brings such suit in equity against the true owner after the latter has recovered the property at law."

Following this doctrine (Anderson *vs.* Reed) and further imputing knowledge through its fraudulent grantor and agents, and of the court proceedings, to the association, Mr. Justice Hagner denied the relief sought, holding, however, that knowledge of the conveyances and of the deed of trust must be imputed to the appellees, the court saying:

"There is evidence in the record that facts might readily have been ascertained by them (appellees) from which they might well have learned at an earlier time * * * of the source from which the money employed was derived.

"Recalling their former experiences with Walter and Bradshaw in the erection of the brick shanty on these lots; their aforesaid defense of that building and their possession and inclosure of the lots, with their subdivisions by Walter, the defendants under their conviction of the illegality of the means by which they had been thwarted in the obtention of their rights by Walter and his associates might well have assumed that any similar practices respecting property should be ascribed to the said parties. A slight inspection would have shown that before their notice to the said Childs the excavations for buildings were in progress on their lots; and the land records would have disclosed the numerous conveyances of the lots, suspicious in their appearance, which culminated in the deed to Bradshaw and his deed of trust to secure the association for the large amount of $40,000 named therein; all of which must have been printed and generally read by business people in the Register of Conveyances, published every week day. If the defendants knew nothing of this, they were probably only of the small minority of business men who had not observed it. I therefore think knowledge of these conveyances and of the deed of trust to the association at earlier dates than those assigned in the answer must be imputed to the defendants."

An appeal was duly taken to the Court of Appeals of the District of Columbia, which affirmed the court below with costs. The opinion of the Court of Appeals was rendered by Mr. Justice Morris, who, among other things to be hereinafter more particularly discussed, said:

"In disposing of this case we might well, perhaps, adopt the excellent opinion filed in it by the learned justice who heard it in the court below. That opinion is thorough and elaborate and satisfactorily disposes of all of the questions raised by the record."

A further appeal was duly taken to this court.

Assignments of Error.

The Court of Appeals of the District of Columbia erred in its decree (R. Print., 301) affirming the decree (R. Print., 282) of the Supreme Court of the District of Columbia dismissing the bill of complaint, and in the opinion (R. Print., 294) on which said action was based endorsing the opinion of the lower court (R., 514), as follows:

I.

In holding, in effect, that the action of the appellees—whose own claim was based upon prior possession only, and while themselves out of actual possession, with full knowledge of the erection on the property of six substantial and valuable stone and brick houses while said property was in actual possession of said Bradshaw, a person known by them to be without means and capable of the perpetration of fraud, in standing by, without effort on the part of said appellees to warn the improver, the association, which, as grantee of record upon the security of said land and the improvements thereon being erected, was slowly supplying the funds with which said buildings were being built—did not thereby subject said land to an equitable lien in favor of the association to the extent of the value of the improvements erected by it in good faith.

II.

In holding, in effect, that although the appellees were found in the opinion of the lower court (adopted by the

Court of Appeals *in toto*) to have had knowledge of the improvements and of the deed of trust, there was no duty imposed upon them to warn the association against the fraud being perpetrated upon it, and that, in the presence of obvious gross fraud being perpetrated upon the association, enhancing the value of their property, the appellees might rely upon the implied notice to the association by pending ejectment suits without thereby conniving and concurring in the fraud, and that the appellees' conduct throughout appears to have been fair and reasonable.

III.

In holding, in effect, that the appellant bases his claim of knowledge on the part of the appellees on mere constructive notice to them involved in the recording of the deed of trust.

IV.

In holding "that an occupant of land, who has entered upon it in the honest belief that it is his own and who has in good faith improved it, is not entitled after having been evicted by the true and lawful owner, to claim an equitable lien for his improvements against such true and lawful owner," and in following in this respect Anderson *vs.* Reed (14 D. C. App., 54).

V.

In holding, in effect, that because said Bradshaw, the grantor of the association, was an occupant in bad faith, that therefore the association, as grantee of an occupant in bad faith, can have no better right in equity than its grantor.

VI.

In holding, in effect, in the determination of the question of good faith of the association in the premises, that there

must be imputed to the association "knowledge of the various suits that had been brought by the defendants before advance of the money by the association," and by reason of the knowledge so imputed "its possession and control of the improvements upon the lots cannot be considered as that of an innocent holder without notice."

VII.

In holding, in effect, that the omission of any reference to the land involved herein from the original docket of the court and the special docket index, both of which purported to show the land involved in the ejectment suits, and from the general index thereto, compiled by the clerk of the court at public expense and purporting to give a complete list of the lands in square 939 involved in ejectment suits, and the examination of said general index by the title examiner for the association, are not pertinent to the case at bar; that such general indexes were not required by law to be kept, and therefore a certified copy of the entries thereon is inadmissible in evidence; that the appellees were in no way responsible for such defects and cannot suffer by reason thereof; that no examiner of title can rely upon "any marginal note," but must examine the papers in the cases themselves; that it is nowhere alleged that the association or those who examined the records for it were misled by the failure of the clerk of the court to make additions to the docket and index book, and that there is no proof of such misleading; and in failing to take into consideration the state of the face of the docket, the special index thereto, and the examination of the general index corresponding therewith, as tending to show good faith.

VIII.

In holding, in effect, that had actual knowledge of their adverse title been given to the association by the appellees at

any time after the execution of the deed of trust under which the money was expended, they would have imparted no information not already imputable to the association, through its "agent," as "the equivalent of full actual notice," and that the association, with knowledge so imputed, made in the deed of trust a contract with Bradshaw binding in equity; and, further, in holding that the deed of trust provided for advancing one-half of $20,000 "within a few days" after it was recorded.

IX.

In holding that the association was placed in the hands of a receiver by reason of this and other ill-advised loans, without any testimony whereon to support this conclusion and notwithstanding the undisputed evidence of the appellant receiver, to the effect that "the association had never had any trouble about an error in title" (R., 125); and, further, (R., 126 and 145) that the receivership was caused by an adverse decision of the Supreme Court of Mississippi (case of Sodolaski *vs.* N. S. B. & L. Association, 77 Miss., 155), holding in effect that the association's loans in Mississippi, amounting to nearly $250,000, could not be enforced, which doctrine was, after the receivership, reversed by the proper federal court.

X.

In holding, in effect, that the officers of the association accepted a "chain of title" grossly defective, showing no title whatever in Walter or Bradshaw, and that the chain was further defective in not showing that the grantors to Walter were the heirs of George Walker, the original grantee.

XI.

In holding that there was no legal duty on the part of the appellees to warn the association against the consequences

of its own action and the fraud perpetrated upon it by its own agents; and, further, that the course pursued by the association was improvident and inconsiderate.

XII.

In holding, in effect, that the positive averments in the answer in respect to alleged notice being given to Childs, a bricklayer, and in respect to an alleged offer of compromise, except in so far as the same constitute admissions of knowledge and the equities charged in the bill, can be accepted as proof on behalf of the appellees in the absence of any testimony in support thereof.

XIII.

In holding, in effect, as true the *unproven* averment in said answer to the effect that the appellees offered to sell to the association the property at the market value thereof, notwithstanding the fact that said averment is contradicted by the exhibit to said answer, on which said allegation is predicated, purporting to be a copy of the letter constituting the alleged offer of compromise, and which alleged letter suggests "the price at which some lots (unimproved) in the same or contiguous square are *offered* for sale" (italics supplied), and notwithstanding the further fact that one of the appellees, Joseph R. Beardsley, was a minor.

XIV.

In holding that the members of the local board were agents of the New South Building and Loan Association.

XV.

In holding that the knowledge of members of the local board engaged in fraudulent conduct against or perpetrating

a fraud upon the said New South Building and Loan Association was notice to the association.

XVI.

In holding that "the entries on the records of the court" * * * "would have informed any intelligent inquirer of the existence and condition of the suits," or that such "was obvious upon ordinary inspection."

XVII.

In holding that the dockets denominated "Legal Dockets," as distinguished from the general index prepared by the clerk, contained the necessary entries from which notice could be derived of the pendency of the ejectment suits against the land in question.

XVIII.

In holding that there was record notice of the existence and pendency of the ejectment suits at the time of the transaction involved herein.

XIX.

In imputing notice to the said association by reason of the former equity suit, brought by certain of the defendants against Walter and others, praying for an injunction, and which was dismissed for want of prosecution prior to the execution of the deed of trust herein.

XX.

In not affirmatively holding that the association, as an innocent purchaser in good faith, took a conveyance in trust

and supplied the funds with which the buildings were erected.

XXI.

In not holding that it was incumbent upon the appellees, after the showing made, to have explained their standing by and silence, and further to have made known all the knowledge actually acquired by them in respect to the improvements which they saw being erected on the land they claimed.

XXII.

In not holding, by reason of the knowledge which the appellees are shown to have had in respect to the erection of six permanent buildings on their land ostensibly by a person known by them to have been irresponsible, while they stood idly by, without giving or attempting to give notice to the corporation which they knew, or should have known, was supplying the funds with which the same were being erected, that the land of the appellees should, in equity and good conscience, be subject to a lien in favor of the appellant to the extent of the value of the improvements.

XXIII.

In not holding that the appellees, or persons through whom they claimed, should promptly upon the commencement of the buildings have notified the association of the true state of the title and of the pendency of their adverse claim.

XXIV.

In not directing a decree to the effect that the complainant was entitled to a lien upon the premises mentioned in the bill of complaint to the extent of the value of the improvements

placed thereon, and referring the cause to the auditor to state an account in accordance therewith between the parties to the cause.

XXV.

In not reversing the decree of the Supreme Court of the District of Columbia, dismissing the bill and the amendments thereto, and in not granting the prayers of the appellant.

ARGUMENT.

From the statement of the case and a perusal of the opinions of the two courts below, it will be seen that a misconception of the underlying principles of equity applicable to the questions involved misled the courts in respect to their power to grant any relief and caused them to bring into confusion what would seem to be a clear case for the interposition of a court of equity to grant the character of relief sought.

In the argument of the case all of the assignments of error will be treated under three subdivisions, namely:

First. The appellees, by standing by and acquiescing therein while the buildings were being erected on the property claimed by them with the funds of the association, advanced in good faith, are estopped to deny the right of the appellant to a lien on the property to the extent of the value of the improvements.

Second. The appellant, as receiver of the New South Building and Loan Association, occupies the position of a *bona fide* purchaser for value and without notice and cannot be deprived of protection in equity by the bad faith of Bradshaw, the grantor, or the fraud of the members of the local board who participated with him in fraud on the association.

Third. Without reference to the connivance and estoppel of the appellees, the appellant, as receiver of the New South Building and Loan Association, as an improver in good faith, is entitled in equity to a lien on the property to the extent of the value of the improvements bestowed with the funds of the association.

These propositions will be presented in the order of their statement.

I.

Equitable Estoppel.

The first, second, third, fourth, eleventh, twelfth, thirteenth, twenty-first, twenty-second, twenty-third, twenty-fourth, and twenty-fifth assignments of error are involved directly or indirectly in this first proposition.

The improvements herein, as alleged in the bill (R., 10) and proven by the testimony, are a row of six brick houses, three stories in height, containing six rooms and bath each (R., 188), constituting Nos. 215 to 225 Ninth street N. E. and having a frontage of 16 feet each. The fronts of the buildings are pressed brick with stone trimmings. They rent for and now yield to the appellees, according to the testimony of their agent, Mr. Hough (R., 460), the sum of $20.50 per month each, or a sum of $1,476 per year.

Previous to the construction of the houses the land was vacant and yielded nothing, not even the taxes (R., 474).

As admitted in the answer (R., 34), the funds with which the buildings were erected came from and were supplied by the association. This fact is also shown by the testimony.

The accumulation of materials and the excavations for the foundations of this row of houses was actual and early notice to the defendants of the extensive nature and cost of the improvements.

The first money was payable from the association when the first-floor joints were laid (R., 316) and this had been duly certified, etc.

The alertness of the defendants is shown throughout the record.

As was well known by the appellees, the only proprietary title to this land was the Walker title of record. Since 1804 down to and including the date of the recording of the trust herein, there were no conveyances under such proprietary title pertaining to this land save and except those through which the deed of trust came of record (R., 174). The genuineness of the heirship to George Walker of the persons through whom such conveyances were made was regarded as having been substantiated and the title was considered by the title insurance companies of the District of Columbia as complete in this particular (R., 160 and 170). At the time this loan was made it was generally understood and believed in legal circles (R., 196) that the old George Walker proprietary title had been perfected.

For some four or five years this property had been in the actual possession of persons claiming under the Walker title.

The claims of the defendants to most, if not all, of the land were founded upon tax titles, as averred by the appellees in their answer. In addition to this weakness in their record claims to the land, the conveyances through which they claimed were based upon the numberings of lots on the original plats which appeared only in pencil form, while the persons claiming through the Walker title had followed the descriptions in ink form. Said numbers, as designated on plat of square 939 (R., 370), the pencil numbering being in red ink and the ink numbering in black ink, are fully discussed by the Court of Appeals in the case of Nehemiah B. Ashley *vs.* Aaron Bradshaw (14 App., p. 485).

So strong was the *prima facie* record showing under the Walker title that the appellees, in a suit instituted for the

purpose on March 1, 1890 (R., 422), were unable to restrain the persons claiming thereunder from dealing with the land through the records of the court as their own (R., 421); nor were they able to acquire a decree quieting the title of the appellees thereto. As averred by the appellees therein (R., 427), they knew that Aaron Bradshaw had "no property, real or personal," and charged under oath "the irresponsibility pecuniarily of Walter, Bradshaw," etc.

The evidence in this case abundantly shows that when, in 1890, Bradshaw and Walter (R., 431 to 434) constructed a small worthless building on the southwest corner of square 939, on the lot contiguous to the part of the land in question, the appellees, or the parties through whom they claim, were most aggressive in the assertion of their claim and made vigorous protests against the erection of such building. In addition to all this, the appellees, or the parties through whom they claim, knew as a matter of fact that the proprietary title, up to the date of recording the trust, stood in the name of one Lydia Hoagland and not in the name of Bradshaw, the person against whom their ejectment suits were so amended in March, 1893, as to include the land in controversy.

So apprehensive were the appellees, or parties through whom they claim, at the time with respect to the assertion of adverse claims that James A. Ashley, an attorney and practitioner in the Patent Office, and residing at 38 C street N. E., Washington, D. C., only a few squares away, had been constituted as the attorney-in-fact of all of the parties entitled to possession and also acted as the next friend for appellee Joseph R. Beardsley (R., 43).

So alert were the appellees and their counsel to defend title to the land that they took notice of the *building permit* issued by the District authorities in advance of the erection of the house on the corner, as stated, and attached a copy thereof to their said bill of complaint (R., 430*b*).

The first payment was made by the association herein

about November 29, 1893, in pursuance of the provisions of the deed of trust. The following facts and circumstances came under the eyes or within ready reach of appellee James A. Ashley, for himself and as representative of the others, which showed in advance of the first payment the purpose and extent of the improvement to be erected with the money of the association. On October 30, 1893, was recorded the following instruments:

(1) Release from John T. Arms and Samuel Drury, trustees, to Lydia Hoagland (R., 385); (2) deed from Lydia Hoagland to Leta M. Moss (R., 387); (3) deed from Leta M. Moss to Aaron Bradshaw (R., 390); (4) deed of trust from Aaron Bradshaw and wife to John H. Kennard and Johnston Armstrong, of New Orleans, Louisiana, trustees (R., 22), to secure the building association bond for $40,000 to secure an advance of *$20,000* from the New South Building and Loan Association of New Orleans, Louisiana; (5) recording of these instruments was published in the real estate and court record at the time (R., 420); (6) on November 20, 1893 (R., 383 and 384), there was applied for and issued to Aaron Bradshaw, by the building inspector of the District of Columbia, a permit to construct the six three-story brick buildings on the particular land described, said application (R. Print., 208) stating that the improvements were estimated to cost $24,000, and that *F. M. Angelo* was to be the builder; (7) there was the usual publication in the *Star* and *Post,* daily newspapers, at that time with respect to these proposed buildings (R., 216 and 217).

It is charged in the bill and not denied by the answer that the plaintiffs knew of the construction of these houses from the very beginning of the breaking of ground (R., 10, 14, 36). Before the first payment, the building had progressed to the laying of the first-floor joists (R., 316).

Mr. Thomas W. Smith, who supplied the lumber and whose place of business is First street and Indiana avenue N. W. (R., 249), by which Mr. Ashley in going to and from his

office passed (R., 251) and with whom Mr. Ashley had had a long acquaintance, noted the publication in the legal court record and knew at that time where the money came from with which the buildings were erected. No inquiry was made of Mr. Smith by owners.

Frank M. Angelo, the person mentioned as builder in the application for building permit, knew where the money was coming from with which the houses were being constructed, had to sign the certificates, was on the grounds where the buildings were being erected almost constantly and supervised the woodwork, but no inquiry was made of him by the owners (R., 241).

Mr. Stockstill, who supplied other materials for the building (R., 224), had no difficulty in ascertaining where the money came from with which the houses were being constructed (R., 226). The only person whom, it is claimed by the defendants, they notified was a Mr. Childs, shown by the testimony of his nephew to have been a poor old man, notoriously without means (R., 297). As suggested before, the appellees did not place James A. Ashley on the stand or explain or attempt to explain the reason for the silence of the appellees, or the persons through whom they claimed, or to deny the allegations of the bill to the effect that they knew of the erection of the buildings from the very beginning until their completion, and stood by in silence, under all these circumstances, while the same were being erected. They do not explain to what extent, if at all, they made inquiries or why they failed to pursue the knowledge they had actually received, and how it was that they could state in their answer that they did not know the full claims of the association until after their buildings were completed.

Their answer admits and ratifies the action on the part of Mr. Henry F. Beardsley in admitting in their behalf the equities of the association by reason of the improvements "under the peculiar circumstances of the case" (R., 45), and that appellees' interests should be treated on the basis of

"unimproved" land. (See Exhibit B to joint answers, R., 45.)

From these facts it is clearly shown, and appears not to be disputed, that the appellees, or the persons under whom they claim, were not only cognizant of the fact of the commencement and erection of the substantial improvements by some one claiming under the proprietary title and actual possession of Bradshaw, but also that the appellees had actual knowledge or knowledge sufficient to have readily discerned the party which was being defrauded. If the details of the advance were not actually acquired by the appellees, it was evidently a part of the fraud perpetrated by them in closing their eyes to the evidences pressed upon them; and this is made conclusive by their attitude in urging the defense that they are not "to act as guardian for the building association," and closing their lips as to the actual knowledge they acquired, while inequitably contending, through their counsel, for the fruits acquired by their standing by at the expense of the improver in good faith.

In view of the fraud practiced upon the association by Bradshaw and his co-conspirators, the Supreme Court of the District of Columbia erred in assuming that there was a contractual relation involved between Bradshaw and the association upon the execution of the deed of trust which would have prevented the association from withholding the advances made as the buildings progressed for five or six months thereafter. These facts and circumstances, as will be more fully hereinafter discussed, were such, as between the association and Bradshaw, as to have rendered invalid and illegal the arrangement, and it is grave error to suggest that Bradshaw had any right in equity or law to have enforced the making of advancements in the light of such fraud. The officer of the association in whose custody the checks were retained, and from whom alone they could be received for delivery as the buildings progressed, clearly stated while on the stand (R., 123) that it was within the power of the

association to have stopped such payments at any stage in the progress of the buildings, and that if he had had any idea of the fraud being perpetrated or of a defect in the title, the perfection of which Bradshaw had under oath averred in advance and as a condition precedent in the acquirement of any sum (R., 337), the checks would have been stopped and no advances whatsoever would have been made.

The eighth assignment of error calls attention to a further error on the part of the same court, in this connection, "in holding that the deed of trust provided for advancing one-half of the $20,000 'within a few days' after it was recorded." There is no such provision in the deed of trust. The documentary evidence shows that the advances were to be made as the buildings progressed (R., 316). This was corroborated (R., 119) and not disputed. The check for the first payment of $4,000 was not turned over until a few days after November 17, 1893 (R., 182). The next installment of $3,000 was delivered about December 23, 1893, and the third installment, of $4,000, about January 22, 1894; the fourth, of $2,000, about February 21, 1894, and the last, for $7,000, not until April 12, 1894 (R., 4).

From a careful perusal of the opinions of the courts below, it would seem that they wholly overlooked and utterly disregarded the effects of the frauds practiced on the association by Bradshaw, Walter, and others, both as the same have a bearing upon the rights and relations of the association to and with them and also as they reveal the good faith of the association in the transaction. For instance, in discussing the obligations of the appellees to give notice, Mr. Justice Hagner speaks as though notice to the *"aggressors"* might have been proper to have been made sooner. The equitable doctrine, sought to be applied in this case, is not as between the appellees and Bradshaw, but between them and the building association, fraudulently induced by Bradshaw to make advances and fraudulently permitted by the

appellees, or the persons through whom they claim, to make expenditures which at the time they knew could not have been and were not being supplied by Bradshaw, but by some other party of whose identity the opinion of the Supreme Court of the District of Columbia, concurred in by the Court of Appeals, concedes that the appellees or the persons through whom they claim had constructive if not actual knowledge.

Equitable Estoppel—Authorities.

Anderson *vs.* Reid, 14 D. C. Appeals, p. 76. The occupant in good faith can maintain a bill in equity against the true and lawful owner for the value of his improvements "where there has been fraud, or something in the nature of fraudulent inducement, on the part of the true owner whereby the occupant in good faith has been misled to his detriment." The court cites with approval in this case (p. 73) Story's Equity Jurisprudence (secs. 1237, 1238). "So, if the true owner stand by and suffers improvements to be made on an estate without notice of his title, he will not be permitted in equity to enrich himself by the loss of another, but the improvements will constitute a lien on the estate. In all cases of this sort, however, the doctrine proceeds upon the ground * * * that there is some fraud."

The principle is stated as follows (Beach Eq., vol. 2, 1107):

"If a stranger begins to build on the land of another, supposing it to be his own, and the owner abstains from setting him right and leaves him to persevere in his error, a court of equity will not allow the owner afterwards to assert his title to the land on which the other person had expended money, supposing that the land was his own. The court considers that when he saw the mistake into which the other person had fallen, it was his duty to be *active* and state his adverse title; *and that it would be dishonest in the owner to remain wilfully passive* on such an occasion *in order afterwards to profit* by the mistake which he might have prevented. But to raise such an equity two things are required: first, that the

person expending the money supposes himself to be building on his own land; and secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner."

Kingman *vs.* Graham, 51 Wis. 248-249.

"When, however, the owner is directly apprised of the ignorance of the buyer, and of his purpose to act in such ignorance, he cannot claim the benefit of the principle (exemption from estoppel because (*a*) Not a party to the immediate transaction, (*b*) Title duly recorded), because good faith requires him to speak."

"The duty to speak rests *upon the knowledge that another is about to act in ignorance of the truth*" (*id.*).

"Of course, contact or presence of the party to be estopped is not necessary; there may still be a duty to speak."

Bigelow on Estop., 596.

"The term 'standing by' so often used in the books and reports in discussing cases of estoppel, does not mean actual presence or actual participation in the transaction, but it means silence when there is knowledge and a duty to make a disclosure."

Anderson *vs.* Hubble, 93 Ind., 573.

The case of Sumner *vs.* Seaton, 47 N. J. Equity, 103, is a very full and able discussion of the authorities bearing on the principle. In this case the error as to title on the part of the person improving was held to have been made in good faith, the complication arising from a change in the line of a street by municipal authorities which left the improver without front to a valuable property. The effect of record notice is discussed (p. 112) and cases distinguished (p. 113-118).

At page 119 the court says:

"In the case in hand I find it impossible to suppose that the defendant did not understand that the complainant was making her improvements in the complete confidence that she had title to the whole of her lot. It would have been an

act of the greatest folly, if not outright insanity, in her to have made the improvements if she had supposed any other person owned the strip in question. The transaction spoke for itself, and, as before remarked, there was no pretense at the hearing that the defendant did not so understand."

The Supreme Court says in Morgan *vs.* Railroad Co., 96 U. S., 720:

"The appellee insists that the record discloses a case of estoppel *in pais*, and that the appellant is thereby barred from maintaining the claim that he seeks to enforce in this litigation. The principle is an ~~un~~important one in the administration of the law. It not unfrequently gives triumph to right and justice where nothing else could save them from defeat. It proceeds upon the ground that he who has been silent as to his alleged rights when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent (The Bank of U. S. *vs.* Lee, 13 Pet., 107). He is not permitted to deny a state of things which by his culpable silence or misrepresentations he had led another to believe existed, and who had acted accordingly on that belief. The doctrine always presupposes error on one side and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage."

The rule is otherwise expressed: *"Qui tacet, consentire videtur; qui potest et debet vetare, jubet si not vetat"* (47 N. J. Eq., 111; 10th Md., 317).

In the case of Hoffman *vs.* Smith, 1 Md., 491, it was held that one who stands by and sees innocent parties lay out money and make improvements to which he himself has some claim or title which is unknown to the other parties and he does not give notice of it, he cannot afterwards in equity and good conscience enforce such a claim. The principle was not applicable in that case, because the parties claiming protection from the suggested estoppel were parties to the deed, a right under which they sought to estop, and the im-

provements were made with full knowledge of the adverse right under the deed.

In the case of Bryndon *vs.* Campbell, 40 Md., 331, the estoppel was maintained, the court holding that the improver was without knowledge of the true owner's title, and that the latter saw that extensive construction was going on, "but did not inform Bryndon (improver) that he had any claim of title. This course of proceeding on the part of Governeur, Jr. (true owner), was not consistent with good faith or fair dealing. Courts of equity hold a party estoppel by his silence and acquiescence under such circumstances" (pp. 338, 339). This case is elsewhere cited herein as to defect in record. It was held that the "notice can only be of the record disclosed" (p. 337).

In McIntire *vs.* Pryor (10 D. C. Appeals, 440) was considered a claim for the benefit of improvements as against rents and profits. What constitutes good faith was discussed and authorities considered (p. 441) and the improvements allowed, although the improver had secured what he believed to be good title to the property "by gross fraud upon the complainant, which she was entitled to have redressed in a court of equity" (p. 442). The complainant was guilty of delay in the assertion of her right "such as to give sanction to the improvement of the property by the defendants." * * * "It is claimed that she made some protest against the construction of the improvements in question; but the proof on that point is rather vague. She is, it is true, a poor, ignorant colored woman, unacquainted with her rights under the law, and equally unacquainted with the law's requirements, and the consideration of that fact was potent in our determination of the fraud that was practiced upon her. But we are not justified by such consideration in sanctioning the punishment of the defendants by the confiscation of that which they placed upon the land when they were the apparent owners under an apparently good record title, and which it is not controverted beneficently enhances the value

of the property to the full extent of the value of such improvements. It does not seem to us to be a case proper for such punishment of the defendants" (p. 442).

These authorities, considered in connection with the facts and circumstances of the case, conclusively sustain the contention of the appellant, that the appellees are estopped to deny the right of the appellant to the equitable lien sought.

Notwithstanding these equitable principles and the remarkable conduct of the appellees, the Court of Appeals holds, as pointed out in the second assignment of error, that the appellees' *"conduct throughout appears to have been fair and reasonable."* (Italics supplied.)

It is a matter of conjecture how chancellors of so great distinction could have indulged in such an expression of endorsement of the course pursued by the appellees in the premises, but, after careful consideration of the opinion, the conclusion has been reached that certain matters of defense, which it was error of law to consider, influenced and controlled the mind of the court in this regard, and that the court erred:

In considering (*a*) the unproven affirmative averment of the joint answer to the effect that an offer to sell was made to the association contained in an alleged letter from Mr. H. F. Beardsley to Messrs. Acker and Miller, dated May 31, 1895 (see Exhibit B to joint answer, R., 44); and, further, in holding (*b*) that it was incumbent upon the association to have accepted the same.

To sustain the first proposition (*a*) requires no argument. But, assuming for the sake of the argument, and not otherwise, that the alleged copy of the letter of Mr. Beardsley must be taken as proven, is there anything definite in the price? With one of the appellees, Joseph R. Beardsley, a minor, could a conveyance have been made of the entire title of the appellees? The alleged communication shows on its face "that no delegated authority to act had been given by the association." The president and general counsel and as-

sistant general counsel of the association and Mr. Acker were all on the stand; but there was no effort made to show that the alleged letter had ever been delivered.

It is contended by counsel for the appellees that when the power of attorney (R., 349) was executed by Bradshaw in favor of Acker, dated September 18, 1894, which was recorded October 31, 1894, that the association became committed and bound by agreement to aid and co-operate with Bradshaw in the defense of the title under which the association held. If this is true, and is a proper construction of the power of attorney appearing of record, how could they have expected the alleged indefinite offer, to sell at the price unimproved lands in the vicinity were being *"offered"* (not sold), to have been accepted? And what basis is there for any belief in Mr. Beardsley's good faith in making such alleged offer?

Considering the apparently flimsy nature of the appellees' claim, as it then appeared to be, how could the officers of the association have justified their action in paying such a price for the property at that time?

Inasmuch as the large and more valuable part of the land involved in the ejectment suits would have been left in a state of litigation and the same proceedings would have gone on, even if all of the appellees had been in position to sell and the association had purchased their interests in the land involved herein, how have the appellees suffered by its not having purchased?

But the second (*b*) proposition, under argument, is equally untenable.

In the case of Searl *vs.* School District (133 U. S., 553), similar to the case at bar except that the School District knew of the claims of Searl under a United States patent and had been warned against the erection of its improvements on the land about to be recovered by Searl in an ejectment case in which the School District had pleaded, the case being at

issue and set for trial (p. 557), this court, speaking through the Chief Justice, said:

"Although it (School District) may have been wholly mistaken, *the intention guided the entry and fixed its character*, and it can not be held to have been such a trespass as to justify the claim that the school building, erected in similar good faith, so became part and parcel of land as to entitle the owner (a defendant) to recover its value * * * and no notice of what his grantor or himself intended to insist on *could destroy the good faith in fact.*" (Italics supplied.)

When the association accepted the deed of trust in good faith and in good faith made the advances with which the buildings were erected, especially while the appellees stood by and saw it do so without protest, the *"character"* of its "entry" and its rights became fixed, and the appellees cannot relieve themselves of the association's right first to defend or await the defense of the title it purchased at law and then to seek and obtain the aid of a court of equity to declare its lien.

In concluding the argument of the first proposition laid down in this brief, namely, right of appellant to relief on the ground of equitable estoppel, it is deemed proper to say:

First. That the practical admission of actual knowledge by appellees of the erection of substantial buildings on their property requiring funds which they knew Bradshaw could not supply without defrauding some one to advance the same made it incumbent upon them to be active, perform the easy task of finding out who was being defrauded, and notify such party, or else, in equity and good conscience, to suffer the imposition of a lien to the extent of the value of the improvements so bestowed in good faith by the association. And it is not enough for the appellees to deny full knowledge of all of the facts they might easily have learned; and the failure on their part to place appellee James A. Ashley, the local representative of all of them, on the stand and explain

what he did know and why he closed his eyes to fuller knowledge, is a circumstance which confirms the strong circumstantial evidence of the fraud practiced by the appellees in the premises.

Second. The defense, set up in the answer, an alleged willingness to sell to the association as unimproved property, extra costs, etc., which, while an admission of the equitable rights of the appellant, was not proven, and, if proven, could not prevent the equitable relief craved.

II.

Good Faith.

The appellant, as receiver of the New South Building and Loan Association, occupies the position of a *bona fide* purchaser for value and without notice, and cannot be deprived of protection in equity by the bad faith of Bradshaw, the grantor, or the fraud of the members of the local board who participated with him in frauds on the association.

At the outset of this branch of the argument, it is deemed proper to state certain facts of record which cannot be disputed.

1. That the grantee association, in the ordinary and usual course of its business under its by-laws, secured the examination and report on the title by the proper attorneys and received advice of counsel to the effect that the title was good and that there were no pending suits involving the property.

2. That neither the board of directors and general officers of the association nor any person representing the association in Washington not parties to the gross fraud, found by the courts below to have been perpetrated against it, were cognizant of the fact that ejectment suits were pending.

3. That all of the last-mentioned parties actually and honestly believed that the title to the property in question was good in Aaron Bradshaw, subject only to the deed of trust in favor of the association, before a single dollar was advanced under the trust.

4. That they had no actual knowledge of the fact that Bradshaw was otherwise than in rightful possession of the property or cognizant of the facts pertaining to his acquirement of possession until all of the money had been actually advanced.

5. That the association and its officers and agents, not parties to the fraud, remained in ignorance of the pendency of said suits and defects in title until after all of the $20,000.00 secured by the deed of trust was advanced and the buildings had been completed.

6. That the buildings erected on the property of the appellees were actually constructed with the funds, so advanced, by the association.

7. That, at the time of the transaction, the line of title under which Bradshaw held was the only proprietary title and the same was regarded by the best title companies in this city as a good record title.

8. That the same was also regarded by such companies as a good marketable title when united with actual presumably lawful possession.

9. That no question has been raised against the high standing, character and professional attainments of Mr. Walter H. Acker, who made the final certificate as to the title, or his good faith in making such certificate.

10. That Mr. Acker examined the general numerical index to ejectment suits, prepared by the clerk at public expense and kept by him for the use of himself and the public, which purported to show all of the lands in the particular square in question that were then involved in ejectment suits; that the same corresponded with the numerical entries on the face of the docket in each ejectment case pending; that it also corresponded with the numerical docket index purporting to show all of the land involved in ejectment suits entered in the particular docket embracing the pending ejectment suits involved; that the land involved herein, brought into ejectment by amendments filed in March, 1893, was not numerically noted, according to custom, on the face of the docket, the docket index or the appropriate general index and was, therefore, not discovered by Mr. Acker as being involved in ejectment and not reported to the association, as would otherwise have been done, notwithstanding the fact that said amendments were made during the period covered by the report of Aughinbaugh.

11. That it is not held by either of the courts below that the association, with actual knowledge of the infirmities of the title, acted in bad faith; but, rather, that the infirmity itself and the knowledge of those actively participating in the fraud, were such that, when imputed to the appellant, they constitute him, in contemplation of law, the equivalent of a holder in bad faith.

It is proposed, in the argument of this branch of the case, to show that, but for the errors of law made by the courts below, the conclusion should have been reached that the association was an improver in good faith.

The fifth, sixth, seventh, eighth, ninth, tenth, eleventh, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nine-

teenth, and twentieth assignments of error are involved directly or indirectly in this second proposition.

The errors of the courts below on this phase of the subject may be treated in the main under the following heads:

(*a*) In imputing to the association knowledge of members of local board who were parties to or actually participated in the fraud against the association.

(*b*) In imputing to the association knowledge of the averments of a dismissed equity suit, which did not constitute a *lis pendens*.

(*c*) In imputing knowledge of the pendency of ejectment suits and finding that the defects in the court records and fraud did not relieve against or excuse lack of actual knowledge.

(*d*) In concluding, as an equitable doctrine, that the bad faith of the grantor, Bradshaw, passed by conveyance merely and must be imputed to the innocent grantee.

It is deemed proper, in the outset of the argument, to call attention to certain authorities defining good faith, as applied to cases involving claims to land or improvements on lands of another.

In the leading case of Woodward *vs.* Blanchard (16 Illinois, 432), accepted as authority by this court, it was expressly held that, in arriving at a conclusion with regard to the knowledge of a person claiming to act in good faith in respect to land claimed, such person will not be held responsible by "*imputing*" knowledge, but the knowledge must be actual. The court, page 432, said:

"The policies of the law will not receive actual ignorance of it, as an excuse or defense in doing acts denounced by it as *criminal*, but will impute a knowledge of it to every man, and hold him accountable accordingly. And this is a policy

that can not be altered by actual ignorance in fact, although every one who hears the facts may be compelled to believe the party ignorant. And the party is as definitely concluded from denying the intents and motives resulting from this imputed knowledge, as he is in denying the fact of knowledge. These principles do not apply universally, nor in their inflexible *strictness, to questions of property or title.*" (Italics ours.)

In the case Searl *vs.* School District No. 2 in Lake County (133 U. S., 553), the School District, with full knowledge of the fact that the defendant held under the only United States patent which had been granted, purchased a squatter claim and proceeded to erect the improvements against the expressed notice and protests of the owner under said patent, and this court held that the School District acted in good faith and was entitled to relief against the successful claimant (under whose patent title was admitted and was about to be sustained in an ejectment action to which the School District was a party), to the extent of the value of the improvements.

The court said:

"Though the district had knowledge of the issuing of a patent covering the property, yet it purchased the adverse title of the party *then in possession*, believing it to be better than the patent title, and upon the advice of reputable counsel, who had, on investigation, reported against the validity of the title purchased, * * * ; and that, notwithstanding notice that it was proceeding at its peril, it erected the building in reliance upon such belief that it had the better title. The only legitimate inference from these facts is that the district acted throughout in good faith, as the opposite of fraud and bad faith, and, although it may have been wholly mistaken, the intention guided the entry and fixed its character, and it can not be held to have been such a trespasser as to justify the claim that the school building erected in similar good faith, so became part and parcel of the land as to entitle the owner (a defendant) to recover its value."

In stating the principles and authorities on which it arrived at the conclusion that the district acted in good faith, this court further said (133 U. S., p. 563):

"In *Wright vs. Mattison*, 18 How., 50, this court, in considering a statute of the State of Illinois in protection of persons 'in the actual possession of lands or tenements under claim and color of title made on good faith,' reiterated the rule that color of the title is matter of law, but good faith in the party claiming under such color is purely a question of fact; and held that, while defects in the title might not be urged against it as destroying color, they might have an important and legitimate influence in showing a want of confidence and good faith in the mind of the vendee, if they were known to him, and he therefore believed the title to be fraudulent and void. The court approved of the opinion of the Supreme Court of Illinois in *Woodward vs. Blanchard*, 16 Illinois, 424, in which it was said by Scates, C. J., that 'the state of mind of the party in relation to such title was an existing truth which must be ascertained and found as a fact in the cause. Many independent facts and surrounding circumstances may be admissible in evidence, and legitimately considered as establishing or impeaching the state of mind in its good faith, honest belief or trust in, or dependence upon such title.' And this language was quoted by the court from that opinion: 'Good faith is doubtless used here in its popular sense, as the actual, existing state of the mind; whether so from ignorance, scepticism, sophistry, delusion, fanaticism, or imbecility, and without regard to what it should be from given legal standards of law or reason' (*Ewing vs. Burnet*, 11 Pet., 41; *Pillow vs. Roberts*, 13 How., 472). As remarked by Beckwith, J., in *McCagg vs. Heacock*, 34 Illinois, 476–479: 'The good faith required by the statute, in the creation or acquisition of color of title, is a freedom from a design to defraud the person having the better title;' and 'the knowledge of an adverse claim to, or lien upon property, does not, of itself, indicate bad faith in a purchaser, and is not even evidence of it, unless accompanied by some improper means to defeat such claim or lien.'"

In the light of these authorities, it is observed that good faith, as applicable to the case at bar, must be considered

and determined upon the broad common-sense idea of actual knowledge and positive intent to perpetrate a wrong upon the true owner.

Before discussing the errors of law of the courts below, it is proper to state the precautions taken by the association before accepting the title and making the advances.

Precautions as to Title.

The first application for loan, as presented through the local board in due course of business, under date of June 20, 1893, was accompanied by the certificate of W. E. Aughinbaugh, attorney for local board, to the company, dated May 26, 1893 (R., 327).

There was attached to this certificate a chain of title made by the Real Estate Title Insurance Company of the District of Columbia (R., 319), regular in form (R., 168) as issued, and purporting to give all record transfers from October 13, 1792, down to and including June 2, 1893, between which dates there was nothing to indicate the dates of instruments recorded, the liber and folio only being given in the usual form.

The opinion of Aughinbaugh, similar in every particular to a like report on the same title rendered by Mr. M. Ashford, president of said Real Estate Title Insurance Company, under date of September 16, 1892 (R., 364, 365, and 160), passed in a reasonable way upon the questions presented and concluded that the title was "good according to the record in Lydia Hoagland," subject to a certain deed of trust from said Lydia Hoagland to John T. Arms and Samuel Dreury, securing $10,176, dated September 14, 1892, which, according to the correspondence, was to have been and was released.

With respect to the equity cause, as brought by the Ashleys for an injunction, etc., on March 1, 1890 (for docket entries see R., 421), in which no testimony had been taken

and motion had been made to dismiss, Aughinbaugh said (R., 327):

"Although the record shows absolutely no title to caption in Joseph R. Ashley when living, or in his heirs when dead, yet in March, 1890, the latter instituted proceedings in equity (cause 12318) against John H. Walter, whose title is now vested in said Hoagland, claiming to be the owners of said property. This proceedings is still pending, but the docket shows an undisposed of motion made by the defendants to dismiss for failure to prosecute. I regard this suit as of no vital importance. *It will undoubtedly be dismissed by the court.*" (Italics ours.)

It is to be noted from the report of Aughinbaugh (R., 327) as well as the opinion of Mr. Ashford (R., 160), the name of Bradshaw was not mentioned in connection with the equity suit.

In due course of business this first application of Bradshaw, as accompanied by said papers, was taken up for consideration by the proper officers of the association at New Orleans, and rejected, among other reasons, because "the association never considered applications when there was any cloud on the title of any kind" (R., 91), and, although neither the general counsel nor any officers of the company knew the allegations of said bill in equity (R., 91 and 128), the loan was not allowed, nor would it have been in the absence of the dismissal of the suit (R., 92), and the loan was never made herein until after that suit had been dismissed and the proper final certificate had been signed by Mr. Acker (R., 335).

As seen, the report of Aughinbaugh on the title herein failed to show the pendency of the ejectment suits as against the land in controversy, as had been made to apply by amendments offered in March, 1893, some months prior to the date of his certificate. There is nothing in the record to show that he knew of the pendency of these suits, and the bill of complaint herein was prepared and filed before the

discovery by the appellant of the fact that there was an error on the records of the clerk of the court with respect to such ejectment suits (R., 52), which defect was promptly averred by amendment to the bill (R., 50).

As anticipated by Aughinbaugh in his report, and in confirmation of the opinion both of Aughinbaugh and Mr. Ashford as to the merits of the equity suit, the same was dismissed for want of prosecution on July 1, 1893, and Bradshaw proceeded to renew his application for a loan, reducing the amount sought and the number of lots involved therein. The certificate of the loan committee of the local board, (R., 311), of which the architect was a member, was most complimentary to Bradshaw and there was every indication that the loan was a desirable one, as will be hereinafter more particularly discussed. In the meantime Aughinbaugh had ceased to be counsel of the local board, and Mr. Walter H. Acker had been chosen in his place.

In support of the renewed application, there was forwarded to the association the District Title Insurance Company's continuation of title (R., 330, 332), dated September 23, 1893, and covering a period from June 1 to September 23, 1893, inclusive. This continuation showed the dismissal of the equity suit on July 1, 1893, but failed to make any reference whatever to the pendency of any ejectment suits, which, as contended above, would have been discovered by the Title Company when examining the numerical records pertaining to square 939 but for mistakes in those records with respect to the land in controversy, as brought in by amendments.

Instructions (R., 315) were then given and were received by Mr. Walter H. Acker, a most reputable attorney of the bar, with respect to the precautions required by the association on the subject of title in advance of the making of any payment whatsoever. As stated in the testimony of Mr. John H. Kennard, at the time of the loan, president and general counsel of the association (R., 92), the instructions "were

clear and explicit to the effect that an invariable requirement for the completion of a loan was a title clear and free from all incumbrances in the borrower at all times during the transaction." See Exhibit No. 2 (R., 313), Exhibit No. 3 (R., 315), and the first and *final* certificate required to be made to the abstract of title (R., 335).

This final certificate as signed by Mr. Acker, under date of November 1, 1893, and forwarded to the company contained, among other things, the following statement:

"That there are no proceedings commenced in the State or United States courts which affect this land * * * and that in my opinion the title is good and valid in fee simple in Aaron Bradshaw. * * * subject only to the trust deed of the New South Building and Loan Association, of New Orleans, Louisiana, which is described in the abstract to which this certificate is attached."

This certificate was relied on in making the loan (R., 104). This certificate was made by Mr. Acker, after the examination of the index to ejectment suits, which index, if correct, would have shown this land to be involved and would have referred to the particular suits that are omitted alike from the reports of Aughinbaugh, by the District Title Insurance Company, and by Mr. Acker.

This certificate from Mr. Acker was also made and communicated to the association after the inquiry contained in the letter from the association dated October 23, 1893 (R., 317), with respect to the dismissed equity suit for the want of prosecution without prejudice.

At the time Mr. Acker took up this matter for disposition, in addition to the equity suit being dismissed (R., 332), the docket of the court (R., 421) showed that long before the case was dismissed, on July 1, 1893, its prosecution had been abandoned and no steps whatever had been taken therein on the part of the plaintiffs since 1890, the year it was filed. It was not necessary for him to do so, and the bill of complaint and other such original papers were not read by Mr. Acker (R., 213).

Instructions and Information before Advances.

The association was not only careful with regard to the matter of title, but the precautions with respect to each step, from the beginning to the close of the transaction, were of a character far more cautious and painstaking than are ordinarily used by those who lend money. As hereinafter shown, they could alone have been circumvented by fraud of a positive character.

(1) The application required (R., 305) answers to numerous questions and had to be sworn to; (2) the certificate and report of the local board appraisers (R., 311), likewise under oath, was also complete and strong, both as to the personnel of the applicant and the desirability of the loan; (3) the land was also examined and appraised by persons known to the Association and independently of local board (R., 129 and 136); (4) the loan committee at New Orleans scaled down the amount of renewed application four thousand dollars (R., 312) and required, in addition, a like amount to be expended in improvements or materials in advance of first payment; (5) the mode of payment was so modified as to reserve $7,000 until after the buildings had been completed (R., 314); (6) the instructions contained in letter (R., 315) and loan slips (R., 313 and 314) enclosed, as delivered to and carefully followed by Mr. Acker, were both minute and comprehensive; (7) the blanks supplied, and which had to be and were filled out under oath before each payment were most complete—see Complainant's Exhibits 6 (R., 337 to 341, and 245); also Exhibit 7, "Affidavit of contractor" as to cost of building (R., 343); (8) bond against mechanics' liens (R., 354); (9) agreement as to taxes; (10) agreement as to insurance; (11) release of mechanics' lien, with certificate of "contractor" thereto.

In addition to the certificate, etc., and the report of the architect before each payment, Mr. Acker went in person to

and saw that the houses had progressed to the requisite stages (R., 178). Meanwhile the checks were held by the proper officer of the company and were not allowed to be turned over until all of the proper certificates were had and the prerequisites had been accurately and fully complied with.

It is not and cannot be claimed that the New South Building and Loan Association, or any agent thereof, not party to the fraud against it, had actual knowledge of adverse possession or title or had any intent to prepetrate a wrong upon the appellees.

Errors of Courts Below.

The misconception of the Court of Appeals involved in the ninth assignment of error is sufficiently met by the references to the record noted in the assignment itself.

The tenth assignment of error is also based upon a misconception on the part of the Court of Appeals. At the time the chain of title was made, dated June 2, 1893 (R., 326), nearly five months before the loan was allowed to Bradshaw, it was clearly understood that the legal title stood in Lydia Hoagland, as was reported by Aughinbaugh (R., 328). Before the loan was granted, the chain was continued by Mr. Acker to and including the conveyance to Bradshaw (R., 324).

The court seems to be laboring under the impression that a chain of title, giving the names of the grantors and place of record of deed, is defective if such chain fails to set forth the relationship of such grantors to the ancestor under whom they claim. Such relationship, whether specified in the deed (*and thus alone forming the basis for a descriptive reference in the chain*) or not, are matters ordinarily alone covered by the certificate of title, and was so covered in the certificate of Aughinbaugh (R., 327).

The answer of the appellee (R., print 18) admits that the

grantors to Walter were "persons claiming to be the heirs of one George Walker."

The certificate of title of the Real Estate Title Insurance Company of September 16, 1892 (R., 365), shows that this company was satisfied on the subject of heirship of these grantors. The same was true, at the time, with the Columbia Title Insurance Company. (See testimony of its secretary, R., 169, 173, 174.)

While the conveyance to which the court refers was made prior to and was embraced in Aughinbaugh's certificate, Mr. Acker, who made the continuation and final certificate, also understood that the grantors to Walter were all of the heirs of George Walker, the original owner (R., print 111). Indeed, there is nothing to show that such was not the case, except that the defendants in ejectment would seem not to have affirmatively proven the fact.

Errors Below in Imputing Knowledge.

The errors of the courts below, denominated (*a*), (*b*), and (*c*) above, are here discussed in their order.

(*a*) In imputing to the association knowledge of members of local board who were parties to or actually participated in the fraud against the association.

Certain members of the local board were guilty of fraud against the association, and the courts below so found. The following are the circumstances, in the main:

The New South Building and Loan Association belonged to that class commonly known as "national associations," and was organized under the laws of the State of Louisiana. As seen from the by-laws (R., 76), the corporation was managed and directed by its board of directors and officers, who were all residents of the State of Louisiana. The local board, such as was organized in Washington, D. C., was simply an aggregation of stockholders, to whose interests, as stockholders, it would be to see that no imposition was had on the associa-

tion within their locality, such supervision on the part of the stockholders having long been a source of strength and advantage to local building associations. The local board had its own organization, chosen by resident stockholders, and voluntarily assumed the obligations incident to the administration of the affairs of such board, although neither they nor their officers were regarded as agents of the corporation of which they were stockholders. The local treasurer, for instance, was the treasurer of the local stockholders, not of the association, and the by-laws expressly provided that until the moneys were actually received by the treasurer of the corporation, fees paid by members of the local board to their own treasurer could not and would not be credited on the books of the corporation as paid (R., 80, sec. 4).

In the lawful plan of the organization of the association, it is undoubtedly true that the local board formed an important function, intended as a source of protection and an aid to safety in the conduct, from the home office in New Orleans, of a business of large proportions throughout the United States. In theory it was based upon the idea that the local stockholders would be interested in the successful operation of a corporation in which they were investors, and that therefore they would be as careful in the election of local boards, where they resided, which would be an aid to the corporation, as had been the case in the operation of local building associations.

Any stockholder, or even employee, of the corporation who would take part in choosing unreliable men as officers of such a local board and coöperate with them in the perpetration of fraud against the corporation must have been parties to the fraud.

Aside from the position of treasurer of the local board, the duties of president, architect, and attorney were quite important. Under the by-laws the latter examined and reported on the title to property on which loans were made, the fees therefor, as customary, to be supplied by the borrower.

Under these conditions John H. Walter, B. Stanley Simmons, and W. E. Aughinbaugh respectively were chosen by the local stockholders and accepted the positions of president, architect, and attorney for the local board.

While the record title to the land stood in Lydia Hoagland, an unrecorded deed thereto (R., 387) had been made to the clerk of Walter, Leta M. Moss (R., 134). Walter knew of the pendency of ejectment suits against this land and must have known that the association would not make advances thereon should it become cognizant of the pendency of such suits. There was undoubtedly placed in the hands of Aughinbaugh, what is shown to have been received by Mr. Acker (R., 244), a certificate of title, as signed by M. Ashford, president of the Real Estate Title Insurance Company (R., 364), and dated September 16, 1892, which was some months before the ejectment suits had been so amended as to apply to the land in controversy. The same was issued on the order of Walter (R., 155). Walter also procured from the Real Estate Title Insurance Company a chain (R., 319), according to his written order therefor (R., 154), "only as to fee." As testified to by Mr. John D. Coughlan, secretary of the Columbian Title Insurance Company (R., 168), this chain was regular in form and calculated to deceive, in that the same was confined to proprietary title.

With full knowledge of the defects in the title, Walter actively coöperated thus and otherwise in securing the loan from the association, signing each and every one of the certificates on which money was advanced (R., 338 to 343, inclusive), being present and coöperating, as testified to by his intimate and personal friend, F. M. Angelo, falsely held out by Bradshaw as the builder (R., 384), when Angelo demurred to and was finally induced by Bradshaw in the presence of Walter, in Walter's office, to sign certificates with respect to the correctness of which he did not know (R., 245); said Angelo, under such pressure, going to the

point of making an affidavit to the effect that he was contractor, and that the buildings had cost $24,000, when there was no contract with him except as to the woodwork and he was ignorant of the cost of the building. Angelo admitted on the stand (R., 239 to 247) that he did not tell the appellant thereof when interrogated by him just before (R., 245) the institution of this suit.

The local architect also signed all of these certificates (R., 338 to 342, inclusive), and wrote a letter to the association (R., 363), which formed and made an important link in the chain by means of which, together with the certificate signed by James T. Childs (R., 372), there was made to appear, and certified to by the architect and by Walter in the first certificate (R., 338) to be true, that the building materials to the extent of $3,030 had been purchased by Bradshaw and could properly form a part of the $4,000 required to be expended before the first advancement, when, as a matter of fact, the brick described in the receipt of Childs (R., 372) were a brick-kiln, purchased by Childs for a mere song (R., 299), and which had to be cleaned, hauled and placed on the premises before they could have anything like the intrinsic value certified to by the architect and by Walter.

Not only did Walter and Bradshaw conceal from the association their knowledge with respect to the defects in title, but Bradshaw, presumably in the office of Walter, and before Leta M. Moss, the notary there, made an affidavit, among other things saying:

"That said property is free and unencumbered with the exception of the deed of trust to the building association; that such deed of trust is the first lien against the property" (R., 337).

Instead of Angelo being a contractor, as he purports to be on all of the certificates (R., 338 to 343, inclusive), and instead of the certificate of Angelo as to costs of construction being correct and within the knowledge of Angelo, they were

incorrect and were not within the personal knowledge of Angelo, and Bradshaw knew and Walter must have known that the association was being ingeniously defrauded at every step in the progress of the building.

All of these frauds were such as that, notwithstanding the most careful system of checks and precautions of every kind and with the aid of an honest and conscientious man, in the person of Mr. Walter H. Acker, against whom from the beginning of this record to the end there is not one word of reflection and who exercised the extra precaution of going to and examining the buildings before each payment was made, notwithstanding the duty of the architect in the premises, the association was deceived and defrauded, both as to the state of the title and the actual cost of the buildings erected.

The connection of Aughinbaugh with the matter while attorney is discussed more fully elsewhere in this brief. After the completion of the loan (R., 187), it was discovered by Mr. Acker that Aughinbaugh received from Bradshaw for his services the sum of $250; something more than eight times the amount ordinarily charged by title insurance companies in this District for the same character of service. The fact is evidenced by his receipt for the amount (R., 382). In reporting favorably on the title (R., 327), under date of May 26, 1893, several months after the property became involved in ejectment suits, no mention was made by him of the pendency thereof, although it does not affirmatively appear that he was aware of the fact.

In the light of the law applicable to the case, it is immaterial whether the officers of the local board were agents of the association or not. For the sake of the argument only, conceding them to have been agents, as parties to the fraud against the association, their knowledge cannot be imputed to the association, so as to render it guilty of bad faith.

Notice Through Agent—Agent's Fraud Relieves Principal.

Mechem on Agency, article 723:

"This presumption, however (communication to principal), will not prevail where it is certainly to be expected that the agent will not perform this duty, as where the agent, though nominally acting as such, is in reality acting in his own or another's interest and adversely to that of his principal."

Note, same article:

"While the knowledge of an agent is ordinarily to be imputed to the principal, it would appear now to be well established that there is an exception * * * in case of such conduct by the agent as raises a clear presumption that he would not communicate the fact in controversy, as where the communication of such a fact would necessarily prevent the consummation of a fraudulent scheme which the agent was engaged in perpetrating."

A number of cases are cited and discussed.

Sugden on Vendors, vol. 2, star p. 1043, sec. 20:

"Sir John Leach was of opinion that where an attorney had committed a fraud in obtaining an estate, and afterwards, upon the selling or mortgaging of it, acted as solicitor of the purchaser or mortgagee, the latter was fixed with notice of the fraud, for his solicitor was in full possession of knowledge of the fraud, which he had himself committed and the client was as much affected by his solicitor's knowledge of the fraud as if the solicitor had acquired that knowledge from a third person (Kennedy *vs.* Green, 3 Myl. & Kee., 699). But upon appeal, Lord Broughton, C., considered that as the solicitor was the actor in the fraud, the purchaser or mortgagee could not be held to have notice of the fraud any more than the party upon whom the fraud was committed."

Pomeroy's Equity Jurisprudence, vol. II, art. 675:

"AGENT'S FRAUD.—The second exception is much more important and of far wider application. It is now settled by a series of decisions possessing the highest authority, that when an agent or attorney has, in the course of his employment, been guilty of an actual fraud contrived and carried out for his own benefit, by which he intended to defraud and did defraud his own principal or client as well as perhaps the other party, and the very perpetration of such fraud involved the necessity of his concealing the facts from his own clients, then, under such circumstances, the principal is not charged with constructive notice of facts known by the attorney and thus fraudulently concealed."

Cases cited.

It is thus clear that Mr. Justice Hagner, in the opinion adopted by the Court of Appeals, erred in considering the knowledge of these parties to the fraud as imputing knowledge to the association.

Dismissed Equity Suit.

(*b*) In imputing to the association knowledge of the averments of a dismissed equity suit which did not constitute a *lis pendens*.

On March 1, 1890 (R., 422), certain of the appellees filed a suit in equity against Walter *et al.*, among other things, for an injunction to restrain the clouding of the title to certain property, including that involved herein. As seen from a copy of the docket (R., 421), the temporary restraining order was discharged and injunction was denied August 10, 1890. November 30, 1890, time to file bill of revivor was limited to the February term. Same not being filed, on April 11, 1892, motion was made to dismiss for failure to prosecute. On January 28, 1893, testimony was ordered taken in 90 days. March 1, 1893, motion was made to dismiss for want of prosecution, which was granted by order passed July 1, 1893, when the suit was dismissed.

The certificate of title of the Real Estate Title Insurance Company, dated September 16, 1892 (R., 364), in respect to this suit said:

"On March 1, 1890, the heirs of Joseph R. Ashley filed a bill in equity (No. 12318) against John H. Walter, then the owner and whose title is now vested in Mrs. Hoagland, claiming to be owners of said land, but the record shows no title whatever in said heirs or in Joseph R. Ashley in his lifetime."

The certificate of title of W. E. Aughinbaugh, dated May 26, 1893 (R., 327), in respect to this suit says:

"Although the record shows absolutely no title to caption in Joseph R. Ashley when living, or in his heirs when dead, yet in March, 1890, the latter instituted proceedings in equity (cause 12318) against John H. Walter, whose title is now vested in said Hoagland, claiming to be the owner of said property. This proceeding is still pending, but the docket shows an undisposed-of motion made by the defendants to dismiss for failure to prosecute. I regard this suit as of no vital importance. It will undoubtedly be dismissed by the court."

The continuation of title, made by the District Title Insurance Company—Eugene Carusi, president—dated September 23, 1893 (R., 332), contains the following reference to this suit:

"Equity. 12318. Doc. 30.

"NEHEMIAH B. ASHLEY ET AL.
v.
"JOHN H. WALTER ET AL.

"JULY 1ST, 1893.

"Dismissed for want of prosecution, at complainants' cost, without prejudice."

In transmitting all of the papers, with detailed instructions, to Mr. Walter H. Acker, under date of October 23,

1893 (R., 317), the home office of the association, in respect to this matter, said:

"The case of N. B. Ashley *et al. vs.* J. H. Walter *et al.* must be fully and finally disposed of. Was this the effect of the decree of the 1st of July, 1893? We note in that decree the words 'without prejudice.' Please advise us as to the exact purport of this expression."

With all of these papers in hand, Mr. Acker correctly arrived at the conclusion that the dismissed equity suit had no effect, and he did not deem it necessary, or actually read the papers in that dismissed and abandoned suit or learn the nature of the allegations of the bill (R., 120).

His execution of the final certificate (R., 325) satisfied the mind of the general counsel of the association (R., 104). Said certificate contained the following words:

"That there are no proceedings commenced in the State or United States courts which affect this land * * * and that in my opinion the title is good and valid in fee simple in Aaron Bradshaw," etc.

It is thus seen that neither Mr. Acker nor any officer of the association had actual knowledge of the allegations of the abandoned bill in equity.

Equity Suit Not Notice.

To affect a purchaser with notice, there ought to be close and continuous prosecution of the *lis pendens*, and this is required by Lord Bacon's rule.

Sugden on Vendors, vol. 2, page 1046, article 24; 1st John Ch., 576.

The equity cause for injunction, being subject to dismissal for lack of prosecution, could not affect a purchaser with a notice; but, as a matter of fact as shown, it was finally dismissed, the cause being thereafter no longer *lis pendens* in

any sense, dismissal being naturally more conclusive to do away with notice than the want of close and continuous prosecution upon which the dismissal was based.

Encyclopedia Am. and Eng. Law, 1st ed., vol. 13, page 888.

"Of course *lis pendens* ends with the final dismissal of the cause, prior to the judgment or decree on the merits from whatever cause it occurred."

A voluntary abandonment or discontinuance destroys the *lis pendens.*

Wortham *vs.* Boyd, 66 Tex., p. 404.

"In order to affect * * * encumbrancer with constructive notice the suit must be prosecuted with all reasonable diligence and in good faith and without unreasonable delay, and a neglect to do so will relieve a purchaser without actual notice from the effect of *lis pendens.* * * * The object of the notice is * * * to bind the property, in whosoever hands it may be, with the decree when made in the cause. Hence if the suit be abandoned, or no decree made therein, the purchaser is not affected by the filing of the notice."

Opinion citing cases, 58 Mich., 308, Hammond *vs.* Paxton.

It is thus shown that Mr. Justice Hagner, in the opinion adopted by the Court of Appeals, erred in imputing knowledge to the association of the averments of the dismissed equity suit.

Ejectment Suits.

(*c.*) In imputing knowledge of the pendency of ejectment suits and finding that the defects in the court records and fraud did not relieve against or excuse lack of actual knowledge.

Assuming that the land involved could be brought into the ejectment suits by amendment, which is questioned,

the effect of the pendency of the ejectment suits, if properly entered and indexed, would have been record or constructive notice; but, in the determination of the good faith of a purchaser, the effect of constructive notice may be repelled by showing inquiry with due prudence and diligence, where the inquiry has proven futile. It has been shown above that the association was diligent and utilized the ordinary and proper means of inquiry as to the state of the title.

Assuming, notwithstanding the defects in the index, for the sake of the argument and not otherwise, that the pendency of these suits should have been discovered and reported by Aughinbaugh in his report of May 26, 1893, it has been shown above that his complicity in the fraud would relieve the association."

It is contended, therefore, that the association is relieved, by the inquiries made and the precautions taken, of the charge of bad faith in respect to the pendency of the ejectment suits, in the absence of actual knowledge thereof, independently of the defects in the records to be discussed below. In support of this contention attention is invited to the following authorities:

"To say that he was put upon inquiry, and having made all due investigation without obtaining any knowledge of title, he is still chargeable with notice of a deed, if one really did exist, would be absurd."

Rogers *vs.* Jones, 8 N. H., 269.

This decision is referred to with approval in Williamson *vs.* Brown, 15 N. Y., by Paige, J., p. 363; also by Selden, J., p. 362, who also says:

"This presumption, however (of being put on inquiry), is a mere inference of fact, and may be repelled by proof that the purchaser failed to discover the prior right, notwithstanding the exercise of proper diligence on his part."

The case of Jones *vs.* Smith (1 Hare, 43) is cited at page 360, where the purchaser made due inquiry, and the following quotation taken with approval:

"The affairs of mankind cannot be carried on with ordinary security, if a doctrine like that of constructive notice is to be refined upon until it is extended to cases like the present."

Acer *vs.* Westcott, 46 N. Y., 384, 7 Am. Rep., 355; Peckham, J., cites above cases with approval and reviews the authorities at length. The decision (p. 357) quotes Lord Chancellor Cramworth in Ware *vs.* Egmont, 31 Eng. L. & Eq., 89, 97, who said:

"The question, where it is sought to affect a purchaser with constructive notice, is not whether he had means of obtaining, and might, by peculiar caution, have obtained the knowledge in question, but whether the not obtaining of it was an act of gross or culpable negligence." * * * "I must not part with this case without expressing my entire concurrence in what has, on many occasions of late years, fallen from judges of great eminence on the subject of constructive notice, that it is highly inexpedient for courts of equity to extend the doctrine."

See also Bryndon *vs.* Campbell and Governeur (40 Md., 338, 339).

In the case of Spencer *vs.* Spencer, 4 Jones Eq. N. C., 400, it was sought to set aside a conveyance of shares by an intended wife as fraudulent. The principle of constructive notice was invoked to sustain the deed, but the court said, page 410:

"In a case like the present, there is no room for a constructive notice. That is always resorted to for the purpose of preventing the person who has it from doing an act to the injury of another. Here the husband can injure no other person. He has rights which the rule protects by preventing another person from injuring him."

Errors in Docket and Indexes.

The appellant is further relieved and his good faith sustained by the errors in the docket and the indexes thereto, but for which the association's title examiner, Mr. Acker, would have discovered the ejectment suits. Among the assignments of error pertaining to the subject of good faith is assignment No. VII, charging errors as follows:

"In holding, in effect, that the omission of any reference to the land involved herein from the original docket of the court and the special docket index, both of which purported to show the land involved in the ejectment suits, and from the general index thereto, compiled by the clerk of the court at public expense and purporting to give a complete list of the lands in square 939 involved in ejectment suits, and the examination of said general index by the title examiner for the association, are not pertinent to the case at bar; that such general indexes were not required by law to be kept, and therefore a certified copy of the entries thereon is inadmissible in evidence; that the appellees were in no way responsible for such defects and cannot suffer by reason thereof; that no examiner of title can rely upon 'any marginal note,' but must examine the papers in the cases themselves; that it is nowhere alleged that the association or those who examined the records for it were misled by the failure of the clerk of the court to make additions to the docket and index book, and that there is no proof of such misleading; and in failing to take into consideration the state of the face of the docket, the special index thereto, and the examination of the general index corresponding therewith, as tending to show good faith."

By reference to the amendment to the bill (R., 50), treated as allowed by the courts below, it will be seen that it was averred that Mr. Acker and the District Title Insurance Company were both misled or failed to discover the pendency of the ejectment suits, by reason of the defect in the general numerical index to ejectment suits, and it is shown by the testimony, more particularly referred to below,

that said defects were directly caused by the omissions from the face of the docket and the docket index, with which the general index corresponded.

It further appears from the testimony that while Mr. Acker confined his examination to a period subsequent to the time this property was brought in by amendments (date of Aughinbaugh's report), yet by reason of his consulting the general numerical index, purporting to show all lands in square 939 involved in ejectment suits, he would have discovered and reported those suits but for the omissions on the face of the docket and the docket index, from which the general index was compiled.

Clearly, the court erred in not treating as admissible in evidence the certified copy of the general index, as the fact of its existence and examination by Mr. Acker is undoubtedly pertinent to the matter of good faith.

Under the authorities cited, it is not essential to the good faith of the appellant, in fact, that the dockets and indexes should have been required by law to be kept.

It is contended, however, that they were required by law to be kept.

The laws applicable to this District at the time, as to the duties of the clerk, provided:

"For making dockets and indexes, issuing venire, taxing costs and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars. * * * For searching the records of the court for judgments, decrees or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made. * * * All books in the offices of the clerks of the circuit and district courts containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be opened to the inspection of any person desiring to examine the same, without any fees or charge therefor" (Abert & Lovejoy, D. C. Stats., p. 415).

In addition to the above, the rules of court, formulated under the law, direct the clerk to keep dockets, a part of which, in fair construction, would be the general indexes as well as the special indexes relating to each docket. The numerical indexes of ejectment suits are a part of these indexes and the dockets to which they refer and would otherwise be proper books to be kept by the clerk for the inspection of attorneys and others.

The examination of all the original records or entries in ejectment and other suits, in behalf of purchasers of realty, is a physical impossibility and it is fair to contend that the clerk has authority to keep his dockets in such manner that they will subserve the purposes for which they are authorized.

In the case of the Washington, Alexandria and Georgetown Steam Packet Company *vs.* Sickles, 65th U. S. (24th Howard, 333), the court, referring to the effect of docket entries in the District of Columbia, said:

"The defendants objected to these docket entries as evidence of a verdict and judgment, but insisted they were simply memoranda or minutes, from which a record of a verdict and judgment were to be made. It appears that in the courts of this District, as in Maryland, the docket stands in the place of, or, perhaps, is, the record, and receives here all the consideration that is yielded to the formal record in other States. These memorials of their proceedings must be intelligible to the court that preserves them, as their only evidence, and we cannot, therefore, refuse to them faith and credit."

At the time the then ejectment suits were filed, in October, 1891, the clerk kept common-law dockets as he does now. In the caption of the dockets is a blank space for the designation of the character of the action and the land involved. At the appropriate place in this docket, numbered 36, in which all three of the suits are entered (R., 216, 221, and 225), there was entered as to each suit the words "Ejectment,

lot 1, square 939," and there was left plenty of room in the blank space below for the entry of any further land which might thereafter be brought into the suits. To avoid the necessity for any inspection of the face of the docket, thus kept under the law, there was also kept by the clerk, under the letter "E" (ejectments), a list of the numbers of all the ejectment cases in that docket, together with a description of the land involved in each, so that from this numerical index one could readily ascertain whether any given tract of land was involved in an ejectment suit entered in that docket. (For copy of said index for said volume see Record, 435.)

As seen, the land involved in this suit was not embraced in or affected by these ejectment suits until March, 1893; the certified copies, made subsequent to the institution of the suit at bar, show that the clerk had failed to add said land or make any note thereof, either on the face of the docket or in the index thereto (R., 435). Both counsel for the appellees (R., 444-445) and the clerk concede that this docket was required by law to be kept (R., 503).

The same error is also found in the general numerical index (R., 393) embracing said suits, which, as carefully prepared by the clerk and one of his assistants, has been on the shelves subject to use as public records since January, 1893 (R., 438).

There was an effort on the part of counsel for appellees and the clerk, in whose office the error occurred, to show that the general numerical index, covering the suits in question, was not required by law to be kept. It was admitted, however, by the clerk (R., 503) that it was compiled in the same way and under like authority as were the general indexes to equity suits, mechanics' liens and judgments; that, like such dockets, it was kept conveniently arranged (R., 441-442) for the use of attorneys, title examiners, or any one else desiring access thereto; that it was kept with the same care as if regarded by him as being required by

law (R., 504) and *was relied on by the clerk;* that " if a person comes in and wants to know about a certain ejectment suit or a certain piece of property, we can turn to the books and get it without running through each docket." It was admitted by Mr. Buhrman, witness for appellees who assisted the clerk in compiling the docket, that without such general numerical index or some data other than the description of the property, he knows of no way in which an ejectment suit affecting a given tract of land could be discovered (R., 444).

The contention of the clerk and his assistant to the effect that the general index to ejectment suits is not authorized by law would seem to be untenable and contrary to their own admitted attitude with respect thereto:

First, the docket was compiled by the clerk himself as a public officer, with the assistance of an employee of his office, and placed in convenient form with the further service of "the binder."

Where is the authority for the utilization of the time of the clerk and his assistant and the public binder, if the provision of law above quoted is inapplicable to such expenditures, under which he is allowed to exact fees "for making dockets and indexes," etc.?

Second, it is admitted that when the clerk's office makes an examination for land embraced in an ejectment suit the general indexes so compiled are used and utilized in making such search, and, as the clerk says, "we rely on them."

If such index is not one of "the records of the court," how is it that the clerk can rely on it in compliance with the provisions of the law above quoted, which says that a certain fee may be charged "for searching the records of the court, or other instruments, constituting a general lien on real estate?"

Mr. Acker testified that prior to November 1, 1893, when he made his final certificate, he examined this general index to ejectment suits (R., 204); that it did not show land in

controversy (R., 204); that the clerk's office then kept such separate book for ejectment suits (R., 204); that such numerical index does not give the name of the parties (R., 206); that the books to this date do not show the land in controversy (R., 206); that the indexes were found in the clerk's office on the shelves near judgment records; that such books are used by counsel and were so used when he made the examination of title (R., 206); that cases at law Nos. 39040, 39063, and 39064 were filed subsequent to date of examination of trust, September 30, 1893 (R., 265); that general Index No. 2, in which such later suits were afterwards entered (R., 393), was also on the shelves at the time he made his examination (R., 265), when he was diligently seeking to find out whether there was any suit at law or in equity (R., 205); that had he discovered the ejectment suits he would have communicated the fact to the company and turned down the title. The general attorney and the president of the association and assistant attorney and custodian of checks to be used on advances both testify that the knowledge of the slightest cloud on the title would have prevented an allowance of the loan; also that the discovery of the facts would have insured the stopping of advances at any stage in the progress of construction (R., 122).

In the case of Brydon *vs.* Campbell and Governeur (40 Md., 338-339), where, because of an error of a clerk in recording a deed, the purchaser was misled as to the true state of the title, in a suit brought in equity by the party bestowing the improvements, the one who stood by and permitted him to make valuable improvements was held to be estopped.

In passing upon the good faith of the appellant, therefore, the courts below erred in imputing knowledge of the pendency of the ejectment suits to the association.

Purchaser Bona Fide from Fraudulent Vendor Free from Effects of Fraud.

Under this head is considered the proposition (*d*) relating to the error of the Court of Appeals:

(*d*) In concluding, as an equitable doctrine, that the bad faith of the grantor, Bradshaw, passed by conveyance merely and must be imputed to the innocent grantee.

This question is raised by the fifth assignment of error, which is based upon the following language of said court (R., print 299):

"Nor can it be supposed that the grantee of an occupant in bad faith can have any better right than his grantor had."

The standing in equity of innocent grantees has been defined by this court in The Colorado Coal Company *vs.* United States, 123 U. S., 313.

"Mr. Justice Matthews, after stating the case, delivered the opinion of the court.

"It is fully established by the evidence that there were in fact no actual settlements and improvements on any of the lands, as falsely set out in the affidavits in support of the pre-emption claims and in the certificates issued thereon. This undoubtedly constituted a fraud upon the United States sufficient in equity as against the parties perpetrating it, or those claiming under them with notice of it, to justify the cancellation of the patents issued to them. But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone the defense of a *bona fide* purchaser for value without notice is perfect."

This opinion has been approved in subsequent decisions of this court, and where a purchaser held under a quit-

claim deed (U. S. *vs.* California Land Company, 148 U. S., 31).

Concerning *bona fide* purchaser, Pomeroy's Equity Jurisprudence, article 754, says:

"There are two special rules on the subject that have been settled since an early day, one being a mere application of the general doctrine, and the other a necessary inference from it. The first is, that if a second purchaser for value and without notice purchases from a first purchaser who is charged with notice, he thereby becomes a *bona fide* purchaser and is entitled to protection."

Note 1 to same:

"For the same reason, a purchaser for value and without notice from a vendor who has himself acquired his title through fraud becomes *bona fide* free from the effects of the fraud."

Good Faith Established.

In concluding this branch of the argument, it would seem difficult to conceive of a stronger or more perfect showing of good faith in a case of this kind than is presented by the record. The general officers, board of directors, and every agent or employee not implicated in fraud against the association are shown to have been without actual knowledge of the claims of the appellees whereon they alone could have and did recover the property in ejectment. The association took every reasonable and ordinary precaution, and its lack of actual knowledge is due to actual fraud on the part of officers of the local board, the grantor, Bradshaw, and the appellees. Furthermore, this fraud could not have been perpetrated but for actual and serious defects on the face of the court docket, the docket index thereto, and the general numerical index compiled therefrom.

The showing of good faith, in fact, is much stronger than is required by the authorities bearing on the subject. Many of the precautions actually taken in this case could have been

omitted, and still, under the authorities, the courts below should have held that the association acted in good faith.

For instance, in the case of Acer *vs.* Westcott (46 N. Y., 384; 7 Am. Rep., 359), cited above, Peckham, J., adds the following:

"In the language of the Lord Chancellor, Jones *vs.* Smith, 1 Phillips, 244-256, above referred to: 'Undoubtedly, in the present case a cautious, prudent circumspect person would not have advanced the money without the production of the deed; but that is not the principle on which cases of this sort have been decided.' Again: 'I do not consider this a case of gross negligence, but the party having only omitted that caution which a prudent, wary and cautious person might, and probably would, have adopted,' is not to be charged with notice. The majority of men (Judge Peckham adds) are not 'wary' and where no bad faith is found, the law does not usually require such conduct as can be expected only from the 'wary' to protect an innocent purchaser from loss."

Compare also the facts in this case with those in the case of Searl *vs.* School District (133 U. S., 553), where a conveyance was taken from squatters in the face of an outstanding United States patent and the improvements were erected against constant protest, yet the court held that the improver acted in good faith.

Indeed, in the first decision rendered in this country recognizing and sustaining the right of an improver, in the absence of estoppel, to receive compensation for the value of the improvements, the case of Bright *vs.* Boyd (1st Storey C. C., p. 478), there was a defect in the title which could not be remedied and which defect was clearly apparent upon the face of the records.

Whether Bradshaw and the others participating or with knowledge of the alleged frauds are grantors or agents of the appellant, from the standpoint of equity the appellant, as purchaser without notice and otherwise acting in good faith, is not to be imputed notice and thus deprived of relief. To apply, as a barrier to relief, the agents' knowledge or the

grantors' bad faith, when they are active in the fraud, would be to mock at equity and contrary to its well-settled method of procedure as to innocent purchasers and principals. The designing grantor or agent, and all others, beholding his guile and profiting thereby, would indeed be safe, if the victim can have no relief in equity by reason of imputed knowledge.

III.

Equitable Lien Independently of Estoppel.

Without reference to the connivance and estoppel of the appellees, the appellant, as receiver of the New South Building and Loan Association, an improver in good faith, is entitled in equity to a lien on the property to the extent of the value of the improvements bestowed with the funds of the association.

This proposition is based on the fourth assignment of error:

"In holding 'that an occupant of land, who has entered upon it in the honest belief that it is his own and who has in good faith improved it, is not entitled after having been evicted by the true and lawful owner, to claim an equitable lien for his improvements against such true and lawful owner,' and in following in this respect Anderson *vs.* Reed" (14 D. C. App., 54).

The appellant filed his bill in this case on May 3, 1901 (R., 1). On May 10, 1901, writs of possession in ejectment cases of appellees or their ancestors against Bradshaw were ordered, based upon judgments in case No. 32181, rendered October 14, 1897 (R., 407); in 32182, rendered May 3, 1901 (R., 410); in 32039, rendered May 10, 1901 (R., 396), and in 39040 (R., 413), rendered May 3, 1901, each judgment for an undivided one-fifth interest except in No. 32039, which was for an undivided two-fifths interest.

The first-mentioned case was decided by this court in favor of Nehemiah B. Ashley, ancestor of certain of the appellees in the case of Bradshaw *vs.* Ashley (180 U. S., 59).

The appellant, not being a party to any of the ejectment suits, could not proceed in equity to restrain prosecution thereof; and hence possession was acquired by appellees, under writs of possession, subsequent to the institution of this suit.

It is believed that the appellant has sustained his right to the relief sought under the doctrine of equitable estoppel which has been discussed above.

It is contended that, irrespective of that doctrine, he is entitled to the relief under the broad principles of equity in favor of an improver in good faith.

In the case of Anderson *vs.* Reed, the Court of Appeals, not properly construing, it is respectfully suggested, the case of Searl *vs.* School District, 133 U. S., 553, held to the contrary of this contention. In the latter case, in an opinion delivered by Mr. Chief Justice Fuller, the improvements placed upon land about to be recovered in ejectment were allowed to the improver, although there was no element of estoppel in the case, the true owner having given notice of his claim, based on a United States patent, before the improvements were made, and the improver relying upon the opinion of counsel, was held to be a purchaser in good faith. The opinion of this court in this case, Searl *vs.* School District, is apparently based upon the broad principle that the value of the improvements "could not justly be included in compensation" allowed the true owner (p. 565), which must be "just, not merely to the individual whose property is taken, but to the public which is to pay for it" (p. 562).

This court in that opinion, relating to proceedings in condemnation brought by the improver against the true owner as defendant, follows the equitable doctrine laid down in the case of Bright *vs.* Boyd (1 Storey C. C., 478-492 *et seq.*), in which Mr. Justice Joseph Storey, then an Associate Justice

of the Supreme Court of the United States, delivered, in 1841 a carefully prepared decision, broadly sustaining the doctrine that a purchaser in *good faith* of a title, shown by the records to be fatally defective, is entitled as plaintiff to relief in an equity court to the extent of the value of the improvements bestowed upon the land as against a successful plaintiff in ejectment, the latter being a minor and non-resident of the State where the land was located when the improvements were made.

The importance of the case and the pertinency of the reasoning justifies the following extended quotation therefrom. Mr. Justice Storey said:

"So that, in fact, the whole reliance of the plaintiff must be upon the aid of a court of equity to decree an allowance to him for the improvements, made by him, and those, under whom he claims, upon its own independent principles of general justice.

"Two views are presented for consideration. First, that the defendant has lain by, and allowed the improvements to be made, without giving any notice to the plaintiff, or to those, under whom he claims, of any defect in their title; which of itself constitutes a just ground of relief. Secondly, that if the defendant is not, by reason of his minority and residence in another State at the time, affected by this equity, as a case of constructive fraud or concealment of title; yet, that as the improvements were made *bona fide,* and without notice of any defect of title, and have permanently enhanced the value of the lands, to the extent of such enhanced value the defendant is bound in conscience to make compensation to the plaintiff *ex æquo et bono.*

"In regard to the first point, it has been well remarked by Sir William Grant (then master of the rolls) in *Pilling vs. Armitage* (12 Ves., 84, 85), 'That there are different positions in the books with regard to the sort of equity, arising from laying out money upon another's estate through inadvertence or mistake; that person, seeing that, and not interfering to put the party upon his guard. The case with reference to that proposition, as ordinarily stated, is that of building upon another man's ground. That is a case, which supposes a total absence of title on the one side, implying,

therefore, that the act must be done of necessity under the influence of mistake; and undoubtedly it may be expected, that the party should advertise the other, that he is acting under a mistake.' The learned judge is clearly right in this view of the doctrine; and the duty of compensation in such cases, at least, to the extent of the permanent increase of value is founded upon the constructive fraud, or gross negligence, or delusive confidence held out by the owner; for under such circumstances the maxim applies: *Qui tacet, consentire videtur; Qui potest, et debet vetare, jubet, si non vetat.* Whether this doctrine is applicable to minors, who stand by, and make no objection, and disclose no adverse title, having a reasonable discretion from their age to understand, and to act upon the subject; and whether, if under guardianship, the guardian would be bound to disclose the title of his ward; and how far the latter would be bound by the silence or negligence of his guardian; and whether there is any just distinction between minors, living within the State, and minors, living without the State; these are questions of no inconsiderable delicacy and importance, upon which I should not incline to pass any absolute opinion in the present state of the cause, reserving them for further consideration, when all the facts shall appear upon the report of the master. There are certainly cases, in which infants themselves will be held responsible in courts of equity for their fraudulent concealments and misrepresentations, whereby other innocent persons are injured.

"The other question, as to the right of the purchaser, *bona fide* and for a valuable consideration, to compensation for permanent improvements made upon the estate, which have greatly enhanced its value, under a title, which turns out defective, he having no notice of the defect, is one, upon which, looking to the authorities, I should be inclined to pause. Upon the general principles of courts of equity, acting *ex æquo et bono,* I own, that there does not seem to me any just ground to doubt, that compensation, under such circumstances, ought to be allowed to the full amount of the enhanced value, upon the maxim of the common law, *Nemo debet locupletari ex alterius incommodo;* or, as it is still more exactly expressed in the Digest, *Jure naturæ æquum est, neminem cum alterius detrimento et injuria fieri locupletiorem.* I am aware, that the doctrine has not as yet

been carried to such an extent in our courts of equity. In cases, where the true owner of an estate, after a recovery thereof at law, from a *bona fide* possessor for a valuable consideration without notice, seeks an account in equity, as plaintiff, against such possessor, for the rents and profits, it is the constant habit of courts of equity to allow such possessor (as defendant) to deduct therefrom the full amount of all the meliorations and improvements, which he has beneficially made upon the estate; and thus to recoup them from the rents and profits. So, if the true owner of an estate holds only an equitable title thereto, and seeks the aid of a court of equity to enfore that title, the court will administer that aid only upon the terms of making compensation to such *bona fide* possessor for the amount of his meliorations and improvements of the estate, beneficial to the true owner. In each of these cases the court acts upon an old and established maxim in its jurisprudence, that he, who seeks equity, must do equity. But it has been supposed, that courts of equity do not, and ought not to go further, and to grant active relief in favor of such a *bona fide* possessor, making permanent meliorations and improvements, by sustaining a bill, brought by him therefor, against the true owner, after he has recovered the premises at law. I find, that Mr. Chancellor *Walworth*, in *Putnam vs. Ritchie* (6 Paige R., 390, 403, 404, 405), entertained this opinion, admitting at the same time, that he could find no case in England or America, where the point had been expressed or decided either way. Now, if there be no authority against the doctrine, I confess, that I should be most reluctant to be the first judge to lead to such a decision. It appears to me, speaking with all deference to other opinions, that the denial of all compensation to such a *bona fide* purchaser, in such a case, where he has manifestly added to the permanent value of an estate by his meliorations and improvements, without the slightest suspicion of any infirmity in his own title, is contrary to the first principles of equity. *Take the case of a vacant lot in the city, where a bona fide purchaser builds a house thereon, enhancing the value of the estate to ten times the original value of the land, under a title apparently perfect and complete; is it reasonable or just, that in such a case, the true owner should recover and possess the whole, without any compensation whatever to the bona fide purchaser? To me it seems manifestly unjust and inequitable, thus to appropriate to one man the*

property and money of another, who is in no default. The argument, I am aware, is, that the moment the house is built, it belongs to the owner of the land by mere operation of law; and that he may certainly possess and enjoy his own. But this is merely stating the technical rule of law, by which the true owner seeks to hold, what, in a just sense, he never had the slightest title to, that is, the house. It is not answering the objection; but, merely and dryly stating, that the law so holds. But, then, admitting this to be so, does it not furnish a strong ground why equity should interpose, and grant relief?" (Italics supplied.)

"I have ventured to suggest, that the claim of the *bona fide* purchaser, under such circumstances, is founded in equity. I think it founded in the highest equity; and in this view of the matter, I am supported by the positive dictates of the Roman law. The passage already cited, shows it to be founded in the clearest natural equity. *Jure naturæ æquum est.* And the Roman law treats the claim of the true owner, without making any compensation under such circumstances, as a case of fraud or ill faith. *Certe* (say the institutes) *illud constat; si in possessione constituto ædificatore, soli Dominus petat domum suam esse, me solvat pretium materiæ et mercedes fabrorum; posse eum per exceptionem doli mali repelli; utique si bonæ fidei possessor, qui ædificavit. Nam scienti, alienum solum esse, potest objici culpa quod ædificaverit temere in eo solo, quod intelligebat alienum esse.* It is a grave mistake, sometimes made, that the Roman law merely confined its equity or remedial justice, on this subject, to a mere reduction from the amount of the rents and profits of the land. The general doctrine is fully expounded and supported in the Digest, where it is applied, not to all expenditures upon the estate, but to such expenditures only as have enhanced the value of the estate, *(quatenus pretiosior res facta est,)* and beyond what he has been reimbursed by the rents and profits. The like principle has been adopted into the law of the modern nations, which have derived their jurisprudence from the Roman law; and it is especially recognized in France, and enforced by Pothier, with his accustomed strong sense of equity, and general justice, and urgent reasoning. Indeed, some jurists, and among them Cujacius, insist, contrary to the Roman law, that even a *mala fide* possessor ought to have

an allowance of all expenses, which have enhanced the value of the estate, so far as the increased value exists.

"The law of Scotland has allowed the like recompense to *bona fide* possessors, making valuable and permanent improvements; and some of the jurists of that country have extended the benefit to *mala fide* possessors to a limited extent. The law of Spain affords the like protection and recompense to *bona fide* possessors, as founded in natural justice and equity. Grotius, Puffendorf, and Rutherforth, all affirm the same doctrine, as founded in the truest principles *ex æquo et bono.*"

The opinion of the Court of Appeals in Anderson *vs.* Reed concedes that the doctrine of Mr. Justice Storey in Bright *vs.* Boyd has been adopted and followed by other equity courts, citing cases of Thomas *vs.* Thomas, 16 B. Monroe, 421; Vallee *vs.* Fleming, 16 Mo., 152; Hatcher *vs.* Briggs, 6 Oregon, 131; McKelway *vs.* Armour, 10 N. J. Equity, 115, and Union Hall Association *vs.* Morrison, 39 Md., in all of which the opinion of Mr. Justice Storey in the case of Bright *vs.* Boyd is accepted and emphatically endorsed.

The Court of Appeals refuses to follow Bright *vs.* Boyd, though bowing before the truth of the principle it sets forth, because this court, following the same principle, in Searl *vs.* School District (*supra*) does not cite that case.

The opinion of the Court of Appeals further cites Williams *vs.* Gibbs, 20 How., 535, and quotes therefrom the following:

"Courts of equity, it would seem, do not grant active relief in favor of a *bona fide* purchaser, making permanent meliorations or improvements, by sustaining a bill brought by him against the true owner, after he has succeeded in recovering the property at law."

The use of the words "*it would seem*" by the court in that case and the further fact of the principle suggested not being essential to the determination of that case might well lead to doubt as to whether this court intended the suggestion as an authoritative exposition of the law. However that may

be, the apportionment, in Searl *vs.* School District, of the benefits of improvements to the innocent purchaser and denial of such benefits to the true owner of the land is a clear, emphatic, and conclusive application of the doctrine *ex æquo et bono*, and constitutes the last expression of this court on this subject.

Conclusion.

In conclusion, it is urged that the appellant, as an improver in good faith, is entitled to the relief sought, both on the ground of equitable estoppel and the principle enunciated in Bright *vs.* Boyd and applied by this court in the case of Searle *vs.* School District.

Blair Lee,
George H. Lamar,
Solicitors for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 122.

ARMSTRONG, APPELLANT, *v.* ASHLEY ET AL, APPELLEES.

Additional Authorities for Insertion in Appellant's Brief.

Page 32: Averments in bill that appellees "knew that said expenditure was being made," and also that they "knew advances would and could not have been made * * * save through fraud and deceit of some party interested in securing the said loan," being facts within the knowledge of the appellees, must be taken as confessed; and, by reason of the evasion in the joint answer, in this and other particulars, must be construed most unfavorably to the appellees.

Cyc., vol. 16, pp. 312, 313.

Grady *et al. v.* Robinson, 28 Ala., 300.

Page 34: The duty to speak is not relieved, even by a judgment of record.

Delett *v.* Kemble, 23 N. J. Eq., 58.

The final judgment in a suit which is *lis pendens* may bind the one purchasing, as to the value of the property at the time of purchase; but a court of equity will protect purchaser in his improvements innocently bestowed.

Murray *et al. v.* Ballou (1 Johnson's Ch., 531).

Record or constructive notice is available against purchaser in good faith only to the extent shown by record made by clerk.

Frost *et al. v.* Beekman (1 Johnson's Ch., 288).

Brydon *v.* Campbell *et al.* (40 Md., 331).

But where the true owner relies on supposed record notice, and purchaser improves, latter will be protected in equity even as to part revealed by record.

Brydon *v.* Campbell *et al.* (*supra*).

Where a person or his family gets the benefits of an advance under a mortgage, made without his knowledge or consent, and the improvements were erected on his land in his absence and without his knowledge, if he afterwards enjoys the benefits, equity estops him from denying the lien.

Brown *et al. v.* Insurance Company, 32 N. J. Eq., 809.

Estoppel applies to infants as well as adults.

Gatling *v.* Rodman, 6 Ind., 289, and cases cited.

Page 36: New matter in answer, by way of defense, must be proven.

Cyc., vol. 16, p. 386.

Marmion *v.* McClellan, 11th App. D. C., 467-485.

Gordon *v.* Dexter, 11th App. D. C., 60, 62.

Page 62: Even where there is actual knowledge of outstanding claim, the improver who takes title and makes improvements after advice of counsel against validity of outstanding claim may be an improver in good faith and is entitled to relief.

Jones, administrator, *v.* Jones, 4th Gill., 87-103.

Page 65: Docket entries are receivable in evidence.

Phil., Wil. & Balto. R. R. Co. *v.* Howard (13 How., 307-331).

Thaw *v.* Ritchie (136 U. S., 519-547).

In re Coleman (15 Blatchford, 425-426).

Last-named case involved "Naturalization Index," for preparation of which there was no order of court; the fact that it was kept was construed as making it a part of the records of the court.

BLAIR LEE,
GEORGE H. LAMAR,
Solicitors for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

JOHNSTON ARMSTRONG, Receiver,
Appellant,

vs.

JAMES A. ASHLEY et al.,
Appellees.

No. 122.

BRIEF FOR APPELLEES.

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JOHNSTON ARMSTRONG, Receiver, Appellant,

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No. 122.

BRIEF FOR APPELLEES.

Statement.

This case is an outgrowth of Bradshaw *versus* Ashley, decided by the court below in 14 D. C. App., 485, and affirmed in 180 U. S., 59. One Bradshaw, acting as the grantee and agent of John H. Walter, had taken forcible possession of the lots of ground in controversy, namely, lots 1, 2, 3 and 20, otherwise known as lots 3, 4, 5 and 6, in Square 939, in the City of Washington, of which the appellees and those under whom they claim had been for years in possession, accomplishing the disseizin by the aid of a mob of colored men armed with sticks and stones (Record, pp. 144–5), relying upon an obscurity in

the title occasioned by a confusion in the original partition of the lots in square 939, referred to in the opinion of this court at page 60, in 180 U. S., and more fully described in 14 D. C. App., 485–7. The appellees originally brought ejectment to recover ink lot 1, being the lot on which Bradshaw had erected a brick structure to hold possession, but subsequently amended their declaration so as to embrace the other lots in dispute, the amendment embracing the realty involved in the present controversy, and upon which, during the pendency of the ejectment proceedings and subsequently to the amendment, he erected the dwelling houses described in the bill, borrowing for the purpose $20,000 from the New South Building and Loan Association of New Orleans, Louisiana, which Association is now represented by the appellant as receiver.

The bill alleges that, in accordance with its plan of organization, a "Local Board" of the Association was formed in the District of Columbia to promote sales of shares or interests therein; that it was customary for this Local Board to pass on applications for loans, forwarding them to the Association, but not being regarded by it as its agents, although the title to property offered as security for its loans was to be examined by an attorney elected by the Local Board; that the said District of Columbia Local Board elected Walter to be its president and one Aughinbaugh its attorney; that Bradshaw made application to this Local Board for a loan upon the property against which the ejectment suits, as amended, were then pending, upon which application the Local Board reported favorably, and Aughinbaugh furnished a certificate showing a fee-simple title in Bradshaw, without reporting the ejectment suits, pursuant to a fraudulent

scheme of conspiracy entered into between Aughinbaugh, Walter and Bradshaw for the purpose of defrauding the Association, Aughinbaugh being paid by Bradshaw eight times the usual charge for a title examination for his services in so doing; that the Association made the loan accordingly, and advanced $20,000 to Bradshaw in aid of his said building operations, being misled by Aughinbaugh's certificate, and being further provided by Walter with a chain of title from the Real Estate Title Insurance Company purporting to show a continuous and apparently complete *record* title, but not purporting to show any actions or suits at law affecting the same; that the defendant, James A. Ashley, representing himself and the other appellees, knew of the erection of the buildings by and with the money of the Association during the progress of the work, that the Association would not have made its advances had it known of the condition of the title or of the ejectment suits then pending, and that the appellees knew, from the record, of the deed of trust given by Bradshaw to secure the Association for its said advances, that it was advancing the said funds for the purposes of aiding in the erection of the said buildings, and, also, from the said deed of trust, what was the domicile of the Association and its officers, but that, notwithstanding such knowledge, the appellees did not give the Association notice of the ejectment suits, but stood by and permitted the said expenditures to be made, to the great loss and injury of the Association; that the value of the improvements was in the neighborhood of $20,000, and was twice as great as the value of the land on which they were placed, and that the silence of the appellees in this respect was misleading and calculated to aid and abet the fraud and deceit of Walter, Bradshaw and Aughinbaugh;

that, irrespective of such conduct on the part of the appellees, the Association, having investigated the title with diligence, and having acted in good faith and without notice of defects in the title of Bradshaw, or of the adverse claims of the appellees, was entitled to an equitable lien; and that, upon both these grounds, it is entitled to have its advances declared an equitable lien upon the lots, so improved by its moneys, for which it prays accordingly.

The deed of trust to secure the Association, printed at p. 12 of the Record, conveys the property in dispute, under the description of sub-lots 48 to 53 made by Walter of lots in square numbered 939, to John Harrison Kennard and Johnston Armstrong, of New Orleans, La., trustees, to secure Bradshaw's bond in the penal sum of $40,000 to the New South Building and Loan Association of New Orleans, La., conditioned for repayment to the Association of advances aggregating $20,000, in monthly installments upon shares of stock held by him, together with fines and forfeitures, etc.

The appellees, by their answer, admit that, at the time of the execution of the deed of trust, and for several years prior thereto, there were then pending the ejectment suits mentioned in the bill, covering the lots 1, 2, 3 and 20, otherwise known as lots 3, 4, 5 and 6, which suits, prior to the filing of the bill, were finally determined in their favor; that George Walker, under whom Bradshaw and Walter pretended to claim, had been a speculative investor in Washington real estate at the time of the foundation of the city, but had shortly thereafter abandoned his purchases and the country, neither he nor any one claiming under him having paid any taxes or exercised any acts of ownership for more than three-quarters of a century prior to the entry upon his holdings by Walter

and Bradshaw in the manner above described; that the appellees had no knowledge of the deed of trust to Kennard and Armstrong, or of the advances from the Building Association, prior to completion of the houses; that the deed of trust was executed and the advances made long after the institution of the ejectment suits, and when they were at issue and awaiting trial; that, upon any diligent or proper examination of title, not only would the pendency of these suits have been disclosed, but the further fact would have appeared that the Walker title had been made the subject of tax deeds for very many years prior to the Bradshaw deed of trust, that the lots had come down through a regular chain of conveyance, extending through nearly three-quarters of a century, to the defendants and to those under whom they claim, who had paid the taxes thereon and thereunder throughout that long period, that the character of the business in which Walter was engaged was a matter of great notoriety in the District of Columbia, and that the fact and circumstances of the forcible possession taken of the property in controversy were also well known in the community; that the appellees were without knowledge of the relations between the Building Association and its Local Board, or chargeable with any notice of or concerned with those relations; that if the Association was made the victim of the frauds alleged to have been practiced upon it by its president, its attorney for the District of Columbia, and by Bradshaw, no one of the appellees was cognizant of the said frauds, in any manner connected therewith, or possessed of any knowledge whatever of the same, but they were wholly free from any participation therein or connection therewith, of any kind or character whatsoever; that there is no color of truth for the allega-

tion of the bill that its advances during the erection of the buildings referred to were within the personal knowledge of any of them ; that they were, on the contrary, wholly ignorant of the source from which the moneys in question were procured, and that they gave to one Childs, whom they understood was constructing the houses, the notice set out at page 23 of the Record, that he would be held liable as a trespasser upon their premises, and that the erection of the said structures was not with their authority ; that it was not until February, 1895, or nearly a year after the completion of the buildings, that they learned through the then attorney of the Association, in connection with an effort for compromising the ejectment suits, that the Association had made the advances stated, and that they then offered to sell to it the lots on which the houses stood, at their then market value, but that the Association, instead of accepting that proposition, employed counsel to aid Bradshaw and Walter in their efforts to defeat the just rights of the defendants in the premises, providing counsel, furnishing the appeal bond which carried the case to the Supreme Court of the United States, and, itself, carrying on the litigation until the affirmance by this Court of the decision below rendered further contest impossible, thereby subjecting the defendants to an amount of costs and expenses, tax arrearages and penalties, and of depreciation in market value while the litigation was in progress, materially exceeding the present value of the improvements so erected; that it was no part of their business to protect the Building Association by investigating its transactions, ascertaining its relations with its own officers and agents, and informing it of their alleged frauds, even if the appellees had been aware of the same, which they deny ; that they had no notice of the exist-

ence of the Association, in New Orleans or elsewhere, or of its loans and advances, and still less of their procurement by the frauds alleged, having had no occasion to consult the land records, and not having in fact done so, at or after the time of the Bradshaw deed of trust, and claiming the benefit of the foregoing and other facts alleged in the answer as though they had demurred to the bill.

As to two of the allegations of the answer, namely, that the defendants gave to Childs, the ostensible builder of the houses, at least at the early stages of the work (see Record, p. 136), notice of their claims as alleged, and that after discovery of the alleged fraud upon the Association, they made to it the proposition presented in Exhibit B to the answer (Record, p. 24), the opposing brief claims no proof was offered.

The first of these allegations, being directly responsive to the charge that the appellees stood by in silence, in bad faith, while the houses were being erected, giving no notice that they claimed title to the lots which were being improved, required no proof, in the first instance, at the hands of the appellees. As to the second of them, made in this court for the first time, not only was the proposition contained in a letter addressed to the attorney of the Association, Mr. Acker, called as a witness and examined at great length by the appellant without attempting to have him deny its receipt, but here, as below, the appellant admits in his brief (pp. 29-30) the making of this proposition by and on behalf of the appellees, and attempts to argue from it their admission, in an unaccepted offer of compromise, that their interests should be "treated on the basis of 'unimproved' land."

After issue had been joined upon the questions and facts raised by the answer, after the testimony in support

and on behalf of the complainants had been completed, and when the time limited in which to take the defendant's testimony had nearly expired, the complainants made the motion to amend set forth at page 27 of the Record, which motion the court, probably because unable to gather the facts of the complicated case sufficiently upon an interlocutory application of that character, denied without prejudice to the complainant to renew the application at the hearing of the case.

The objects of the amendment were, first, to escape the weight of the burden of proof imposed under the rule in equity, the answer being under oath, by waiving, at that stage of the case, after the answer was already in the testimony nearly closed, the requirement that the answer should be under oath ; and, secondly, by setting up the fact, made apparent by the evidence, that the Association did not make its loan at the time of the Aughinbaugh's certificate of title, or in reliance upon it, that certificate bearing date May 26, 1893 (Record, pp. 179–80), but in reliance upon a further examination and continuation of title made by Mr. Walter H. Acker at or about the date of the Bradshaw deed of trust, which was October 28, 1893, and offering as a new ground of equity or relief that Mr. Acker was misled by the fact that two volumes in the office of the Supreme Court of the District of Columbia, purporting to contain a complete index to all pending ejectment suits, and "universally used by those examining or making continuations of title", did not note the amendments of the declaration in the ejectment suits, which embraced the property upon which the dwelling houses are erected. At the hearing, the court considered the allegations of the amended bill to the extent, only, of holding that the two volumes in question,

improvised by the clerk without any authority or requirement of law, were without competency or legal effect, and that no omissions or defects in them excused examination of the original, legally required records, or subjected the appellees to any responsibility. See Opinion, pp. 283–4.

As shown by the testimony of Alfred G. Buhrman (Record, pp. 242–247) and John R. Young (pp. 277–280), the two volumes in question are not dockets created or provided for by law, but simply memorandum books "gotten out merely for the use of the clerk—the benefit of the clerk"; * * * not for "the public at large, but for the information of the clerk and his assistants"; having been first compiled for that purpose in January, 1893; that it is neither the business nor the custom for the clerk of the court to examine amended declarations; that it was simply through courtesy that attorneys were allowed the use of the two volumes in question, and that the dockets themselves are regarded by the clerk as the more accurate, being the original entries, while the two volumes in question are simply books of reference, not prepared for the purposes of title searchers, the original papers in ejectment suits, moreover, being public records and accessible to all, and that the two volumes in question originated in the mere private act of the clerk himself, not called for by any act or law and to which no notoriety was given, the object being largely to save the handling of the dockets, and for easier reference, the papers themselves being always accessible for purposes of accuracy.

Although the appellant called two title examiners as experts—Mr. James J. Becker (p. 87) and Mr. John D. Coughlan (p. 95)—no effort was made to prove that title examiners, "universally" or otherwise, relied upon these

memorandum books of the clerk for the purposes of title examination; and Mr. Acker himself states frankly (p. 115) that the books in question were not provided for by any law that he is aware of; that he should call them mere memoranda in the clerk's office, and (at p. 119) that he cannot name any title examiner or lawyer who uses them as sufficient evidence of the pendency of ejectment suits without examining the original papers, though he "presumes" there are such. The chancellor below, who must be presumed to know what are the official records of his own court, declares in his opinion (Record, pp. 283–4), that they are without legal authority or effect. And see the testimony of the clerk who prepared them, first in 1893, prior to which time they had no existence, Record, 243, 277.

As is shown by the Record, Bradshaw's first application for a loan, in connection with which the Aughinbaugh title certificate was furnished, was rejected by the Association, the loan being granted upon a second application, when the Association was represented by Mr. Acker, whose good faith is unquestioned. Some effort was made below to escape the effect of these facts by claiming that, although they are true, yet Acker was employed only to continue the title examination from May 26, 1893, the date of the Aughinbaugh certificate, to November 1, 1893, at which time the second application was acted upon favorably and the loan granted, the Association relying upon the Aughinbaugh certificate as to the period which it covered, and upon Mr. Acker's certificate only as to the intervening period.

This claim presents this dilemma: If Mr. Acker was employed to examine the title only from May 26, 1893, to November 1, 1893, the alleged defects in the clerk's

memorandum books cannot be relied upon as having misled anyone, since the amendments to the ejectment suits were made March 6, 1893 (p. 213), and therefore not within the period which the Acker examination covered; while, if Mr. Acker's examination was to cover a period prior to May 26, 1893, which is the only basis for claiming that he was misled by the clerk's memorandum books, then the Association's advances cannot be attributed to the bad faith of Aughinbaugh, since it had other and independent counsel, whose integrity is not impugned.

But the Record further shows that, independently of the ejectment suits, both the Association and its counsel had express notice of the claims of the appellees to the property in dispute, or at least such notice as placed upon them the duty of inquiry, and furnished them with easy means of information. In March, 1890, the appellees had filed a bill in equity against Walter, Bradshaw and others, setting up their claim to the lots by virtue of their prior possession, alleging that both Bradshaw and Walter knew of their title, and that they had placed on record their deeds from the pretended heirs of George Walter simply for the purpose of clouding the title of the appellees, and of obtaining "hush-money" from them (Record, pp. 233-236). Aughinbaugh reported the pendency of this suit in his certificate of May 26, 1893 (p. 180), though referring to it as "of no vital importance." The District Title Insurance Company (p. 182) reported it as having been dismissed for want of prosecution, "without prejudice." Mr. Armstrong, the assistant attorney of the Association, in his letter to Mr. Acker of October 23, 1903, before the loan was made, calls attention to the fact that the dismissal was "without prejudice," and asks to be advised as to "the exact purport of this expression,"

while Mr. Kennard, the general counsel of the Association, whose duty it was to examine the abstracts of all titles outside of the State of Louisiana (p. 77), and to whom the local attorney, in addition to his own opinion, was required to send a complete abstract, giving everything necessary to show whether the title was good (p. 84), testifies at page 62 that he knew that the dismissal "without prejudice" terminated the suit without finally adjudicating the rights of the parties, and leaving to the complainants the right to bring another suit. If, therefore, no ejectment suits had been instituted at the time of the Bradshaw deed of trust, the evidence adduced on behalf of the appellant, himself, shows clearly that the Association made its advances with notice of the fact that the appellees had an adverse claim, and that reference by it to the bill filed in the court below, of the existence of which it had specific knowledge, would have shown the fraudulent character of the Walter-Bradshaw title, or at least of the appellees' claims in that regard, which is all the knowledge which express notice from them could have afforded.

The claim of the bill that, although the Local Board passed on applications for loans, and elected the attorney who was to examine the titles, it was not regarded as the Association's agent, even if tenable in law, is not supported by any evidence in the case. On the contrary, its president and general attorney, Mr. Kennard, testifies, at page 52, that the shareholders of the local boards selected "an attorney to represent the Association at that place, and transactions of a local nature were put in his charge, and loans, particularly, were consummated by him and papers were sent to him for such action as was necessary for the completion of a loan." The manner in which the

Association communicated with the local attorney, and the character of the business which it entrusted to him for transaction, are shown by Exhibit W. W. M. No. 3, at pages 173-4 of the Record. Mr. Acker, the only Washington local attorney the method of whose appointment is disclosed in the Record, states that he was employed by Mr. Brevard, the general agent of the Association (p. 100), that he did not think he represented the local board, that he never attended or was invited to attend any of its meetings, and that he did not know of its existence except by hearsay (Record, p. 118).

With respect to the Real Estate Title Insurance Company's chain of title, to which some importance was attempted to be attached at the hearing below, it was a chain which omitted all reference to the tax deeds, and the conveyances under them, which were the only conveyances affecting the property for a period running back three-quarters of a century, by the express direction of Walter, president of the Association's Local Board (Record, pp. 92–3), an unusual form of such chains, calculated to mislead and deceive (pp. 95, 97), and yet, notwithstanding this unusual feature, it showed to anyone familiar with title examinations in this District that the property had been originally allotted to George Walker, and that practically a century intervened before any other conveyances were made purporting to be by or under him, there being general, common knowledge among title examiners that a great many conveyances affecting the property allotted to him, had intervened (Record, p. 97). The record further shows that, as to the conveyances to Walter by persons purporting to be the heirs of George Walker, it was a well-known fact that he had always failed to meet the issue as to the genuineness of these deeds in

the ejectment suits arising under them, and that he had in no instance undertaken to substantiate his claim that the parties purporting to have executed them were in fact heirs of George Walker (Record, p. 98).

As to the allegation of the bill that the appellees knew, during the erection of the houses, that they were being constructod with moneys advanced by the Association, no proof whatever was offered or attempted. The case upon this point rests upon the allegation of the bill, and the distinct and positive denial of it in the answer. Evidence was offered, it is true, that the record of the Bradshaw deed of trust was noted in the publication known as the Court Record, and that notice of the building permit to Bradshaw to erect six brick buildings on Lots 48 to 53, Square 939, appeared in the public notices of such matters in the daily papers at the time; but there is no evidence that these notices came to the attention of the appellees, all of whom were non-residents except James A. Ashley; nor, if noticed, was there anything in them even remotely relating either to the Building Association or to its advances.

The untenableness of the claim that the record of the Bradshaw deed of trust was notice to the appellees of its contents is illustrated by the testimony of Mr. Acker. He was a member of the bar, a practitioner before the court, the attorney for the Association, and an examiner of titles; and yet he not only repudiates the suggestion that, in any of these capacities, he is chargeable with notice of the ejectment suits, equally matters of record with the deed of trust, but declares the very suggestion of such notice to be "perfectfully absurd" (Record, p. 114).

The allegations of the answer to the effect that George Walker was a speculative investor in Washington real

estate at the time the city was founded, and that he shortly thereafter abandoned both his purchases and the country, exercising no acts of ownership for nearly a century prior to the entry of Bradshaw and Walter, are not only proven to be true, but to have been known to Mr. Acker, the attorney employed by the Association (Record, p. 111). Mr. Acker's testimony proves the further allegations of the answer that the Association employed counsel to aid Bradshaw in his ejectment suits, and furnished the bond to enable him to prosecute his appeals and continue the litigation for years (pp. 108, 112, 113); and that it did this after obtaining knowledge of the fact, undenied by Bradshaw, that the latter had gotten possession of the property in dispute by employing a negro mob, armed with sticks and clubs, to protect his forcible entry both during the day and at night until he could erect a small brick building upon it, the negroes singing "We'll Hold the Fort" while so employed and engaged in his service (Record, pp. 144–5). These suits, thus maintained through the Association's assistance, Mr. Acker shows were both protracted and costly (Record, pp. 111–12); while the testimony of the appellee Beardsley (Record, pp. 256–266) shows that they subjected the appellees to an expense of more than $7,000.

A remaining issue of fact between the parties is as to the extent to which the houses increased the value of the land, and how such increased value compares with the cost of the litigation which the Association assisted to impose upon the appellees after its knowledge of the fraudulent character of the Walter-Bradshaw title, and with the loss to the appellees in other ways.

Two witnesses, Mr. Clark and Mr. Getz, testify that the six houses could be built to-day for $3,200 each, and they estimate their depreciation in value during the ten years

since their construction at only $200 each, making their present value $18,000. It is quite evident from the testimony of both Mr. Clark and Mr. Getz, however, that their examination of these houses was an entirely superficial one, Mr. Getz in term so stating. As an illustration of the character of Mr. Clark's estimate, he figures the brick that went into the buildings at $7 per thousand, which in round numbers would be $2,000 for the brick in the six houses (Record, p. 129); while the testimony of Charles Childs (Record, pp. 161–5) shows that, with the exception of about $80 worth of new brick (p. 164) and of $186.25 for press brick (153), the houses were built from the old brick contained in an abandoned brick kiln, costing in all only $100—as to the most of which "the life was all burned out of that entirely by the intense heat" (Record, p. 165). "It was merely a lot of old junk that was sold like anything else and no record made of it" (Record, p. 163). The brick were laid by colored laborers, superintended by a man who had been a watchman and foreman of a gang of men carrying clay from an earth-bank to the machine in a brick yard at wages of $2.00 per day (Record, pp. 135–6, 162). These are, all of them, the facts as proved by the appellant's witnesses.

The walls were tarred to keep the rain out, and there were holes in them which one could see through from the outside (pp. 249–50).

Mr. Henderson, a real estate owner and dealer who averages building from one dozen to two dozen houses per annum, states that the houses could be built, now, for $1,800 (p. 249), and that they are not worth to-day over $1,400 (p. 250) or about $8,000 for the six. They are 16 feet front by 35 feet in depth, while Mr. Henderson testifies that he built 14 houses last year, with a frontage of

17 feet and a depth of 55 feet each, of a very much better character, for $2,700 each.

That the litigation involved loss to the appellees by the depreciation of their property during the years through which it was protracted, is admitted on both sides, Mr. Acker making the loss about fifteen cents per square foot (p. 107), and Mr. Henderson thirty cents per square foot (p. 249), the area being upwards of 24,000 square feet. Not only so, but although possession of the property was delivered to the Association by Bradshaw in trust expressly, among other things, to collect the rents and pay the taxes (pp. 191–21), it ceased to pay the taxes at the first trial, when it learned the true character of the Bradshaw title, although it still continued the litigation and collected the rents (pp. 113–14); so that, at its end, the appellees received the property loaded down with tax sales, arrearages and penalties. They were unable themselves to pay the taxes during litigation without thereby recognizing and binding themselves by a sub-division of the lots which Walter had made, assuming to be the owner, the District refusing their offer to pay the taxes upon the property as they held it, in original lots (Record, p. 263).

Points and Authorities.

Upon the facts of this case, as established by the record, few if any legal questions are presented requiring the citation of authorities.

As to the claim of the Association that it was defrauded by Walter and Aughinbaugh, they were its own agents, for whose fraud it would be responsible to third persons, and for which, *a fortiori*, it clearly cannot hold third persons responsible to it.

Certain authorities are cited at pp. 56–7 of the appellant's brief for the proposition that failure to learn of the ejectment suits is excused, because knowledge of them was fraudulently withheld by the attorney and agents of the Association. The registration or record system would be of little value if the notice they afford can be escaped in this way. The authorities cited are to a very different effect, namely, that knowledge possessed or gained by an agent in a different employment will not be imputed to the principal under such circumstances.

Its claim that the appellees knew it was advancing the moneys for the erection of the buildings is distinctly denied by the answers, and, so far from being supported by the testimony of two witnesses, or by one witness and corroborating circumstances, it is unsupported by the testimony of any witness at all.

Its claim that the record of the Bradshaw deed of trust was notice to the appellee is evidently a misconception of the registration laws. Those laws do not require of any one that he shall actually know everything which third persons choose to state in a deed, which they record; but, simply, that he shall examine the records before accepting a conveyance of real estate, and, if he does not do so, that he be charged, in legal effect, with the knowledge which such examination would have afforded him, and must take his title subject to such knowledge. As above noted, the attorney and principal witness for the Association, Mr. Acker, characterizes as "perfectly absurd" any suggestion that a man is supposed to have actual knowledge of all the facts which the public records disclose, and he is manifestly correct in so doing.

The record does not stop, however, with establishing the fact that the Association, if deceived at all, was de-

ceived by its own agents. Its own testimony, at page 174, shows that it had actual notice, on October 23, 1893, prior to the first of its advances, that an equity suit had been filed by the appellees, which set up an adverse claim or title to the property upon which it was asked to make the advances, and that, although the bill in that case had been dismissed, the dismissal had been "without prejudice," which its general counsel in New Orleans knew was a dismissal leaving the claimants free to bring another suit to enforce their title. The slightest examination of that suit, as the record also shows, would have disclosed to the Association all that it now knows in regard to the character of the Bradshaw title, or of the claims of the appellees in regard to the property, or which any notice the appellees could have given would have conveyed.

That even one who has in good faith, and without notice or negligence upon his part, improved real estate under an honest belief in his title, but who is afterwards evicted through a latent defect in the title, a case infinitely stronger than the present, cannot recover the cost of his improvements by a bill against the successful evictor, has been long and conclusively established. Williams *vs.* Gibbs, 20 How., 538; Anderson *vs.* Reid, 14 D. C. App., 54. The citation of authorities upon this proposition might be multiplied indefinitely, if the foregoing were not conclusive. How can a mere lender of money to one who makes improvements, with full knowledge and in bad faith, claim to do so?

It is respectfully submitted that the decree of the court below was correct, and should be affirmed.

J. J. DARLINGTON,
Counsel for Appellees.

Supreme Court of the United States.

No. 122.—October Term, 1906.

Johnston Armstrong, Ancillary Receiver for The New South Building and Loan Association of New Orleans, Louisiana, Appellant,
vs.
James A. Ashley, Mary M. Ashley, Hayden H. Ashley, Ralph B. Ashley, Mary A. Breckinridge, Henry F. Beardsley and Joseph R. Beardsley, and Emma B. Jenkins.

Appeal from the Court of Appeals of the District of Columbia.

[January 21, 1907.]

This suit was brought in the Supreme Court of the District of Columbia by the appellant, who is the ancillary receiver for the New South Building and Loan Association of New Orleans, Louisiana, hereinafter called the company, against the owners of the real property described in the bill, to establish an equitable lien upon the property for the value of improvements placed thereon with money which the company loaned to one Bradshaw for that purpose, Bradshaw claiming to be the owner at the time. After hearing, the bill was dismissed on its merits by the trial court, and the decree of dismissal was affirmed by the Court of Appeals of the District. The opinions of both courts are to be found in 22 D. C. App. 368. The receiver has appealed here.

The title to the property, which consisted of certain numbered lots in square number 939 in Washington, had been in dispute some time prior to 1891. During the year 1889, 1890 or 1891 one Aaron Bradshaw, acting, as alleged, as agent of one John H. Walter, who claimed to have acquired the title of George Walker, entered upon and took forcible possession of the lots in question, and proceeded to erect a small brick structure on the corner lot, whereby to continue to hold possession.

The respondents herein claim to be the owners of these lots, and in the latter part of 1891 they or their grantors commenced four actions of ejectment in the Supreme Court of the District to recover possession of separate and undivided interests in the designated "ink-lot" number one, and subsequently, by proper amendments, other lots in the same square, comprising the property involved herein, were included in the declarations in those actions. A statement of facts regarding the title to these various lots may be found in *Bradshaw* v. *Ashley*, (14 D. C. App. 485,) and in this court,

upon review of that decision, in 180 U. S. 59, 60, where the expression "ink-lot" is explained as referring to certain ink numbers on a map of the lots in square 939, on file in one of the public offices of the city, and which also had pencil numbers on it, which were different. In that litigation the Ashleys, the respondents herein, finally established their right to the possession of the property and obtained judgment to that effect against Bradshaw, defendant in the ejectment actions, in the Supreme Court of the District some time in 1897 and in this court in 1901. These respondents were thereupon placed in possession of the property, including these lots.

While the litigation in these ejectment actions was pending, and some years before judgment therein, Bradshaw, while defending them, became a stockholder in the company in order to obtain a loan from it, and succeeded, in October, 1893, in borrowing twenty thousand dollars from the company, secured by a deed of trust upon the property in litigation in the actions of ejectment other than ink-lot one above mentioned. The deed was duly recorded and the money was to be used for the construction of buildings, which were subsequently placed on these lots. The money was advanced to Bradshaw by the company in installments, the last being in April, 1894.

It was obtained from the company by means, as alleged, of a fraudulent combination between Bradshaw and one Walter, the president of the local board of directors of the company at Washington, (who claimed to have been the owner at one time of the property, but whose title, whatever it was, had been acquired by Bradshaw,) together with the local attorney of the company in this District. The local attorney, in carrying out the alleged fraud, sent a defective so-called "chain of title," which, nevertheless, had been accepted by the local board of the company in Washington. It omitted certain tax and other deeds under which the respondents claimed title in themselves. This defective paper was continued by other examiners of the title, but was not revised by them. The certificate regarding the title was sent, with the defective chain of title, to the company in New Orleans by the local attorney about May 26, 1893. The certificate approved the application for the loan, but such loan was not acted npon favorably at that time. Subsequently, in October, 1893, the loan was made, the company, as is stated, relying upon the certificate of the local attorney for the period which it covered, and the certificate of the other examiner for the time thereafter passing until the making of the loan. The company has insisted that it acted at all times in good faith and made its advances upon the security of the trust deed, which it supposed was perfectly good. The trial court found that before the money was paid to Bradshaw, upon the security of this trust deed, the company was aware, through its general attorney in New Orleans, of the fact that a suit in equity had (theretofore

in 1890, and before the ejectment actions) been brought by the Ashleys against Bradshaw, Walter and others, in which the plaintiffs therein claimed ownership of these lots, and wherein they asked for an injunction to restrain the defendants from setting up any title to them. The bill on file in the equity suit showed a common source of title to all the lots mentioned therein, which included the lots here in question. The attorney also knew that, although the suit had been dismissed, yet it was only for want of prosecution, and was "without prejudice." The New Orleans attorney wrote to the Washington attorney, who then had charge of the matter, calling his attention to these facts. No notice seems to have been taken of the letter, but the certificate of title by the examiner was given after its receipt. The company insists that during all the time it made advances to Bradshaw under the deed of trust it was ignorant of the existence of these ejectment actions, and at any rate did not know that they covered other than the corner lot, as described in the declarations before they were amended, and the amendments they were ignorant of, because, as is alleged, the clerk of the court in which the actions were pending had not properly kept the books so as to show the amendments and their nature, although they had been filed. The corner lot was not one of the lots upon which the buildings were erected.

The trial court, in the opinion delivered, said that the complainant charged the defendants with knowledge of the advances made by the company to Bradshaw towards the erection of the buildings; but to this allegation the defendants interposed, in their answer, (which was under oath,) a positive denial. They admitted that, although wholly ignorant of the source from which the money came to construct the houses, yet soon after learning that one Childs, a contractor, was engaged in their construction they notified him in writing, January 4, 1894, that he had been represented to them as contractor and builder of the houses for which the ground had been broken, and which houses were then in course of erection, and he was thereby notified that if he, his agents or employes, entered upon the grounds they would be held liable for trespassing thereon, as they (defendants herein) were the owners of the lots and had not given him, or any one else, the right or permission to enter thereon for the erection of houses or any purpose whatever, and that, as the improvements were not made with their authority, they would not be responsible for any liability contracted by Mr. Bradshaw.

The defendants, in their answer, also allege that it was not until in or about February, 1895, that defendants, or any of them, learned of the advances made by the company or of the existence of the deed of trust. The trial court, in its opinion, stated that although "there was no evidence contradicting either of these denials, nor of actual knowledge possessed by

the defendants of the matters thus denied, still it seems to me there is evidence in the record that facts might readily have been ascertained by them from which they might well have learned at an earlier time of the building and of the source from which the money employed was derived." While not finding that the defendants had actual knowledge of the advances made by the company, the court did impute knowledge of certain conveyances made to Bradshaw, and of the existence of the deed of trust to the company at earlier dates than those assigned in the answer, February, 1895. And in relation to an offer of compromise the joint answer alleged that after that time, viz., about May 31, 1895, during negotiations for the compromise of the differences between the parties, Mr. H. F. Beardsley, one of the defendants, wrote to the attorneys representing the company in behalf of himself and his associates, offering to sell to the company the lots upon which the houses then were "at their present market value or price, said value not to exceed the price at which similar lots (unimproved) in the same or contiguous squares are offered for sale. Upon the payment of said price, or sum, we will convey our title to them by deed or quitclaim, or make a building agreement to so convey upon the determination of the pending suits, or a deed in *escrow*, as counsel shall advise. We will hold this offer open until the 1st of July next." This offer was not accepted, but there is nothing stating what, if any, objections were made to it.

Bradshaw had, in 1894, defaulted in his payments of amounts due for his stock in the company, which he had taken in order to procure his loan. Thereafter some arrangements were attempted between him and the company in regard to making his payments, but they fell through, and nothing could be done in the way of collecting anything on the mortgage or deed of trust for the reason that the ejectment actions resulted unfavorably. The company, in 1899, became embarrassed and went into the hands of a receiver in New Orleans, and the same person was appointed ancillary receiver in this District, and brought this suit with leave of the court.

The Court of Appeals held that Bradshaw was an occupant of the premises in bad faith, with the fullest possible knowledge of the rights and claims of the appellees, and that it could not be supposed that the grantee of an occupant in bad faith could have any better right than his grantor had.

Some other facts are stated in the course of the opinion.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The foregoing facts show that Bradshaw, if he were plaintiff, would have no cause of action against the defendants, based upon any allegation that

he was permitted by them to build on what he thought was his own land, while the defendants stood by and did not interfere to prevent it, although knowing that the land was not his and claiming title themselves. At all times Bradshaw had knowledge that not only was his title denied, but that these defendants were asserting to the best of their ability in actions of ejectment against him, the right to the possession of, and title to, the property in question. Under such circumstances it would simply be at his own risk that he expended money on what might turn out to be other people's property, and which he knew was so claimed. His attitude in the matter would seem to have been that if he could successfully defend the ejectment actions he could then pay the loan he had obtained from the company, while if he should prove unsuccessful in the defense it would be the company's misfortune.

The company now insists that the money was obtained from it through the fraud of Bradshaw and the others, as stated. But before coming to the question of what duty the defendants owed to the company it may be well to examine for a moment the position of the company in the transaction leading up to its loan to Bradshaw. It is true, the company asserts, that it has acted in good faith throughout the whole matter. Upon examining its position one fact is apparent and uncontradicted: Before the execution of the deed of trust, and, of course, before the advance of any of the moneys by the company to Bradshaw, the company was aware, through its general attorney in New Orleans, that a suit in equity had been commenced about March 1, 1890, by the Ashleys against Bradshaw and others, wherein they alleged their claim of ownership of the property, which included the lots in question in this case, and in which the plaintiffs sought to enjoin the defendants from setting up any title thereto. It appeared that there was a common source of title to all the lots mentioned in the bill. The bill charged fraudulent and illegal acts on the part of Bradshaw, Walter and other confederates, in undertaking to seize possession of the lots there claimed to belong to the plaintiffs therein, (the defendants in this suit,) and specifically described the status of the parties then existing, and denied to Walter and Bradshaw any ownership or right to the possession of the lots. The facts regarding this equity suit were presented by the general attorney for the company, in New Orleans, to the local attorney of the company in this District, and the fact that the bill had been dismissed only for want of prosecution and without prejudice was specially called to the attention of the local attorney. No action seems to have been taken regarding the contents of that letter by the local attorney after its receipt other than to certify to the title, nor does the general attorney seem to have inquired further about the facts. The bill was, of course, on file in the clerk's office, and it showed the contention as to the title between these defendants and Bradshaw and his

associates. With this knowledge, therefore, it is impossible to say that the company was ignorant of the fact of the existence of a question as to the title of Bradshaw to the premises on which he was seeking to obtain this loan. The dismissal of the bill without prejudice, for want of prosecution, would not be evidence that the title of Bradshaw was good or that the controversy had been settled. It certainly was a warning of the existence of a question as to the title, and it was, at any rate, notice enough to start the company upon some investigation of the facts as to the actual condition of the controversy respecting it. And at this time the ejectment actions had been brought and were pending. The declarations in those actions were then on file in the clerk's office of the Supreme Court of the District, and showed the actions were originally brought to recover possession of "ink-lot" one. It is true that while that particular lot did not include the premises upon which the buildings were subsequently erected, yet the source of title to all the lots was the same. Some months before the deed of trust was executed amendments to these declarations, which did include those lots, had been made and were on file in the clerk's office among the papers in those actions.

Actual knowledge of the fact of the existence of the ejectment actions in regard to ink-lot one is, however, denied by the company, and a like denial is made in regard to the amendments to the declarations. The local attorney had knowledge of them, or ought to have had. But so long as the company had knowledge of the equity suit and the contents of the bill therein there was enough to put the company on inquiry as to the state of the title. If under such facts the company loaned the money, it showed its willingness to take the risk of the validity and sufficiency of the title of Bradshaw.

The company denied knowledge of the amended declarations because of the alleged defect in the manner of keeping the books in the clerk's office, wherein the ejectment actions were entered, but no statement was made on the page of the docket devoted to those actions of the existence of amendments to the declarations. The amendments were, however, duly filed in the clerk's office, and the alleged failure of the clerk to properly index the amendments was no answer to the failure on the part of the searcher to examine the files for the purpose of seeing the papers in existence in the actions. In this matter we agree with the opinion of the Court of Appeals, in holding that the respondents here were in nowise responsible for the alleged failure of the clerk to make additions to the docket or index book. Nor is there any evidence that the persons acting for the company were in any way misled by such failure, to the company's detriment.

The company also insists that it ought not to be charged with any knowledge of any fact which was known only by Walter and the local

attorney. The company asserts, first, that Walter and the local attorney were not its agents; and, in any event, by reason of their fraud, knowledge by the company should not be imputed to it because of the knowledge of its agents. The company asserts that Walter was simply the president of its local board, composed of the stockholders in the company residing or to be found in Washington, and that his action was not the action of an agent under such circumstances. It also asserts the same thing in regard to the local attorney, and denies liability for their acts. We think the position can not be maintained. The president and attorney were directors of the local board and had to be directors before they could hold either office, and the local directors had to be approved by the board of the main office. It was to this local board that the application was first to be made for a loan, and it was to be approved by it and transmitted at once to the main office, signed by the president, secretary and attorney of the local board on a form furnished by the association to applicants for a loan. Transactions of a local nature were put in charge of the local attorney, who represented the company at his locality, and loans were consummated by him and papers sent to him by the company for such action as was necessary for the completion of a loan. The knowledge of the attorney and of the president of the board in regard to a matter coming within the sphere of their duty, and acquired while acting in regard to the same, and sending to the company in New Orleans their report which it was their duty to make, must be imputed to the company. The fact that those agents committed a fraud can not alter the legal effect of their acts or of their knowledge with respect to the company in regard to third parties who had no connection whatever with them in relation to the perpetration of the fraud, and no knowledge that any such fraud had been perpetrated. There is no pretense of any evidence that the defendants had any connection with these alleged frauds, and no pretense that they had any knowledge of their existence, if they did exist. In such case the rule imputing knowledge to the company by reason of the knowledge of its agent remains.

But, even if it be assumed that the company had no more than a knowledge of the equity suit and its dismissal without prejudice, it simply shows that the company was willing to take the risk of the title, although confessedly questionable.

Upon these facts we can not see that the defendants can be held liable to the plaintiffs on account of any failure of duty on defendants' part. If the buildings were being erected by Bradshaw, there was certainly no duty on the part of defendants to notify him of their title to the property, and we can not see that there was any such duty resting upon the defendants to endeavor to find out through what sources Bradshaw obtained the money

to erect the buildings, and to inform the person who was loaning the money that the defendants claimed the property as theirs.

Assuming even that the company made the loan in the *bona fide* belief that Bradshaw had title and that the claims of the defendants to the ownership of the lots were not well founded, and also that no knowledge of the agents of the company in Washington could properly be imputed to it, and we still have the fact that the company loaned its money with knowledge of the equity suit and of the allegations of the bill therein regarding the title of the defendants and the lack of any title in Bradshaw. Imputing no knowledge to the company other than it actually possessed, the same course should be taken with the defendants. In that case we have their sworn denial, unaffected with any proof to the contrary, that they had any actual knowledge of the existence of the deed of trust or of any connection of the company with Bradshaw, or of any advances made by it to Bradshaw, until February, 1895, (long after all the moneys had been advanced,) and even in regard to Bradshaw himself they notified the contractor early in January, 1894, that they owned the property and they would not be responsible for any expenditures made by Bradshaw, and that if the contractor went on he would be regarded as a trespasser.

There is no finding that Bradshaw was insolvent, or that the defendants had any knowledge of it if he were insolvent, and hence there is nothing to lead to the assumption that the defendants knew the buildings could only be erected by Bradshaw with borrowed money, and nothing to show any duty on the part of defendants to take active steps and make a search to endeavor to find out who was loaning him money, and on what security. And yet this is the contention on the part of the complainant. We think it must be regarded as an extraordinary contention and an unreasonable application of the doctrine of constructive notice. This is the language used by the Court of Appeals, and it properly describes the situation. Certainly constructive notice can not be applied to the owner of property in regard to the existence of a mortgage thereon, placed there by some one who did not own such property. The owner of real estate is under no obligation whatever to watch the records to see whether some one who does not own his property has assumed to place a mortgage upon it or convey it by deed to some third person. The defendants knew Bradshaw was in possession and they saw buildings being erected on the lots. Were they to assume that Bradshaw was borrowing the money and that they must, therefore, go to work to find out from whom he was borrowing and notify him of the facts? They in fact knew nothing of the deed of trust, but, by imputing knowledge, the claim is made that a duty founded upon such imputed, but not upon any actual, knowledge, rested upon defendants, for the failure to discharge which the defendants ought to be held liable.

No case has been called to our attention which in any degree resembles the claim made by the company herein. The man who actually erected the buildings knew all about the state of the title, and that it was contested by the defendants in the most earnest and emphatic manner in their actions of ejectment to recover the lots. The evidence fails to show that the company was, before the money was advanced, entirely innocent of any knowledge on its part which would lead to doubt as to the ownership of the property by Bradshaw. But, even its actual good faith, in the popular sense, can not charge the defendants with the duty of active investigation to discover from what source Bradshaw obtained the money to build. The simple facts are that the defendants were in possession of the property when this suit was commenced, and they ask no aid from a court of equity to place them in possession. They had recovered it in their actions at law, and a court of equity will not, even in the case of a *bona fide* improver, grant active relief in such a case. 2 Story Eq. Juris. (12th ed.) secs. 1237–1238; *Williams* v. *Gibbs*, (20 How. 535–538;) *Anderson* v. *Reid*, (14 D. C. App. 54;) *Canal Bank* v. *Hudson*, (111 U. S. 66, 79;) *Searl* v. *School District &c.*, (133 Id. 553, 561,) and other cases, cited by the trial judge in his opinion, and in the opinion of the Court of Appeals. The case of the company is not strengthened by its knowledge that the title of Bradshaw was questionable.

Morgan v. *Railroad Co.*, (96 U. S. 716, 720,) cited, among other cases, by the appellant, has no application. The facts are so wholly different in their nature as to present a case which does not touch the principle decided herein. There was conduct on the part of the appellant which was such as to amount to fraud or misrepresentation, leading appellee to believe the existence of a fact upon the existence of which appellee acted. We find no cases in opposition to the result we have arrived at.

The decree of the court below is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.